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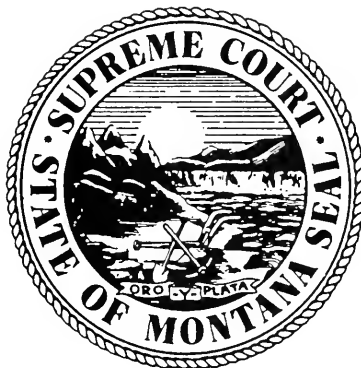
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ANNUAL REPORT OF THE  
MONTANA JUDICIAL SYSTEM  
CALENDAR YEAR 1991

J. A. TURNAGE  
CHIEF JUSTICE

A PUBLICATION OF THE  
OFFICE OF THE  
COURT ADMINISTRATOR  
ROOM 315, JUSTICE BUILDING  
215 NORTH SANDERS  
HELENA, MT 59620



THE SUPREME COURT OF MONTANA

J. A. TURNAGE  
CHIEF JUSTICE



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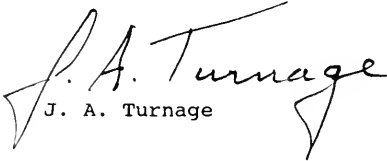
May, 1992

Dear Fellow Montanans:

This 1991 Judicial Report on Montana Courts is part of a continuing effort by the Supreme Court to keep the Governor, the Legislature and the public informed about the activities of the Montana court system.

Our courts play a vital role in protecting individual freedom, adjudicating disputes between citizens, and ensuring access to fair and impartial justice.

I encourage the reader to review the 1991 Judicial Report and to learn about the duties, responsibilities and advances in Montana's Judiciary.

  
J. A. Turnage



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Supreme Court Clerk's Office -- Annual Statistics

Small Claims Court -- A Citizen's Guide





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1991 JUDICIAL REPORT



## PROFILE OF THE MONTANA JUDICIAL SYSTEM

### STRUCTURE OF THE COURT SYSTEM

The Judicial power of the State of Montana is vested in a three-tiered structure of appellate, general, and limited jurisdiction courts. These are represented respectively by the Supreme Court, District Courts, and Courts of Limited Jurisdiction.

In addition, legislatively created courts exist for the adjudication of special legal issues. The Workers Compensation Court and Water Court are examples of these specialty courts.

#### Selection and Removal of Judges

All Judges in Montana are elected in nonpartisan elections. Supreme Court Justices are elected for eight-year terms; District Court Judges for six-year terms; and all other judges serve four-year terms.

Vacancies in the Supreme Court and District Courts are filled by election if a term has ended and by gubernatorial appointment if a vacancy occurred during a term. However, before a vacancy can be filled by gubernatorial appointment, the Judicial Nominations Commission must first submit a list of three to five nominees to the Governor from which the Governor must make an appointment. If the Governor fails to nominate within 30 days of receiving a list of nominees from the Judicial Nominations Commission, the Chief Justice or acting Chief Justice makes the appointment. Each person nominated must be confirmed by the State Senate. If the Senate is not in session the person nominated serves until the end of the next session of the Legislature. If the nomination is not confirmed by the Senate the office is vacant and another selection and nomination is made.

A vacancy in the office of Chief Water Judge is filled by appointment of the Chief Justice from a list of nominees submitted by the Judicial Nomination Commission.

A vacancy in the office of Workers' Compensation Judge is filled by appointment of the Governor from a list of nominees submitted by the Judicial Nomination Commission.

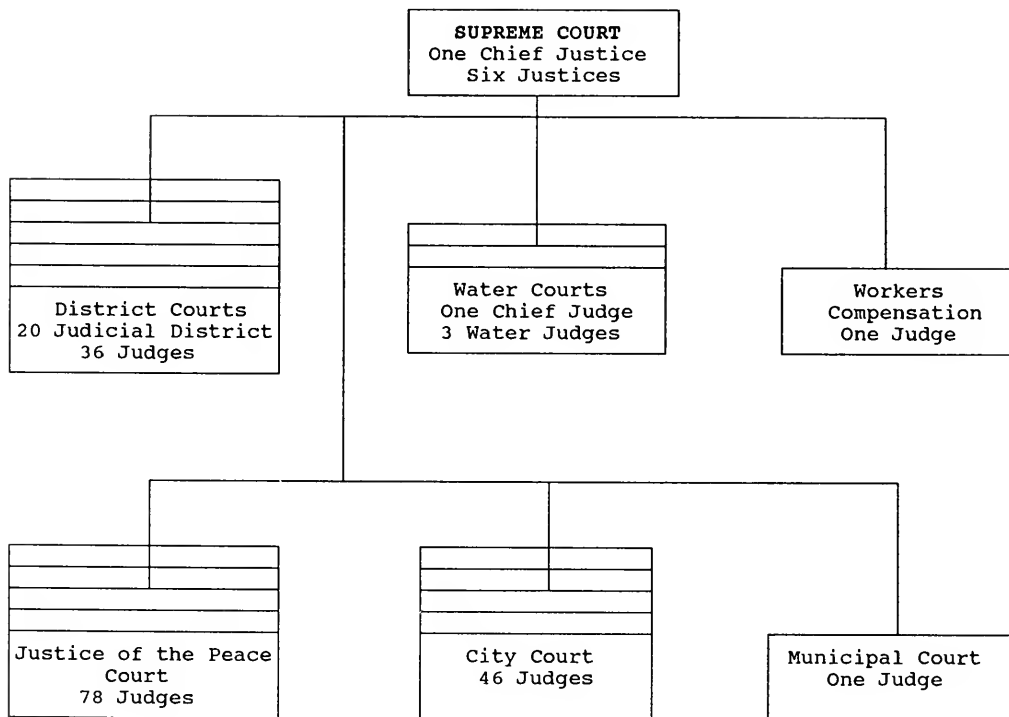
Vacancies in the office of Justice of the Peace are filled by appointment of the County Governing Body.

Vacancies in the office of City or Town Judge are filled by appointment of the City or Town Governing Body.

If a vacancy occurs in a Municipal Court, it is filled by appointment of the Municipal Governing Body.

Under the Montana Constitution the Supreme Court, upon the recommendation of the Judicial Standards Commission, may retire any justice or judge for disability that seriously interferes with the performance of his duties, or censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of the canons of judicial ethics adopted by the Supreme Court, or habitual intemperance.

# STRUCTURE OF THE MONTANA JUDICIARY



## THE MONTANA JUDICIARY A BRIEF HISTORY

### SUPREME COURT

The Territory of Montana was organized by an Act of Congress, approved May 26, 1864. Section 9 of the Act vested the judicial power of the State in a Supreme Court, District Courts, Probate Courts and Justice of the Peace Courts.

The first term of the Supreme Court of the Territory of Montana was held in Virginia City on May 17, 1865. Hezekiah L. Hosmer who was appointed June 30, 1864 by President Abraham Lincoln served as the first Chief Justice. On June 22, 1864 Lorenzo P. Williston and Ammi Giddings were appointed Associate Justice. Ammi Giddings declined to serve, but his commission remained in force until March 11, 1865 when Lyman E. Munson was appointed to replace him.

In the early Territorial period, Justices of the Supreme Court each presided over one of the territory's judicial districts. This arrangement usually meant that when a case was appealed to the Supreme Court, one of the Justices personally had tried the case at the District Court level. This system changed in 1886 when Congress provided for the appointment of a fourth Justice and provided for disqualification on appeal of a Justice who had tried a case in District Court.

In the initial years of the Court, decisions about cases were rarely given in writing. In January, 1872, the Territorial Legislature provided for written reporting of Supreme Court decisions.

The July, 1889 term of the Territorial Supreme Court was the last term held before Montana became a State on November 8, 1889. When the Territorial Supreme Court adjourned sine die on October 5, 1889 -- the Territorial period ended and the modern era of statehood began.

Statehood brought several changes to Montana's Judicial System. During Territorial days, Justices and District Judges were appointed by the President of the United States. After 1889, Montanans turned to a system whereby they elected justices, district, and local judges and judicial officers. They hoped thereby to encourage "more prompt and accessible administration of justice". Justices, District and local judges were elected on a partisan ballot until 1909 when a brief and largely forgotten experiment in nonpartisan judicial elections was established. (Laws of 1909, Chapter 113) This law was enacted with only one opposing vote in the closing days of the 1909 session. The law prohibited partisan filings by judicial candidates and required their nomination by citizen petition. 1910 was an "off" year for judicial elections; only the Chief Justice and two District Judges were to be chosen. Chief Justice Brantly, known as a populist Republican won a third term receiving 39% of the votes in a field of four candidates.

Voters evidently missed party labels since the total vote cast in the 1910 nonpartisan contest was notably small. Fewer than half of those who voted for Clerk of the Supreme Court on the partisan ballot voted for the Chief Justice on the nonpartisan ballot. The experiment was terminated in 1911 when the Supreme Court on a complaint of a Republican candidate for Butte Police Judge held the legislation unconstitutional. The 1935 Legislature (Laws of 1935 Chapter 182) made judicial elections nonpartisan for a second time, but the effect on voter participation was not so dramatic as in the one-election experiment of 1910.

Article VIII of the 1889 Constitution established a three-member Supreme Court with members elected to six-year terms.

During the first three decades of Statehood the Supreme Court remained at three Justices but the caseload required additional resources in order to keep current. The 1903 Legislature provided for the appointment by the Supreme Court of a three member Court Commission "of legal learning and personal worth" to assist the Court -- at a salary of \$4,000 a year for Commissioners. The term of office for the Court Commission was four years, during which time the Commissioners were prohibited from engaging in the practice of law. When the 1905 Legislature failed to provide an appropriation for the salary of the Commissioners salaries, they all resigned.

The 1919 Legislature increased the membership on the Supreme Court to five members.

In 1921 the Legislature approved the second Court Commission and directed the Supreme Court to appoint "from among the duly elected, qualified and acting District Judges of the State of Montana, from any of the various counties or districts three (3) of such judges to act for such period of time as may be designated in the order appointment as Commissioners of the Supreme Court".

The Supreme Court remained at five members until the 1979 Legislature authorized two additional Justice positions to assist in handling the overburdened Court calendar.



THE MONTANA SUPREME COURT

Left to right, Justices Fred J. Weber, John C. Harrison, William E. Hunt, Sr., Chief Justice J. A. Turnage, Justices Karla M. Gray, R. C. McDonough, and Terry N. Trieweiler.

## DISTRICT COURTS

The 1889 Constitution established eight judicial districts with one District Judge in each district elected for a four-year term. The number of judicial districts has fluctuated over the last century. The growth in the number of counties beginning in 1911 led to the creation of twenty judicial districts by 1919. The number of judicial districts shrank to 16 in 1932, expanded to 19 in 1977 and settled at the present 20 in 1984.

The number of District Court Judges has likewise grown since the beginning of Statehood. Starting with eight District Court Judges in 1889, the Legislature quickly added second judges in the State's two largest cities -- Helena and Butte -- in 1891. Today there are 36 District Court Judges.

## COURTS OF LIMITED JURISDICTION

A majority of citizens receive their first exposure to the judicial system in the Courts of Limited Jurisdiction which are the Justice of the Peace, City and Municipal Courts. The Constitution of 1889 provided for the creation of the Justice Courts, Police and Municipal Courts. The Constitution of 1972 retained the Justice of the Peace Courts as a constitutional office and deleted any reference to Police or Municipal Courts, but allows the Legislature to create other courts such as City or Municipal courts.

Judges in the Courts of Limited Jurisdiction are elected for a four year term and are required to attend two annual training sessions supervised by the Supreme Court. Failure to attend the training sessions results in disqualification of the Judge from office.

## CHANGES AFTER 1972

The adoption of a new judicial article in the 1972 Constitution did not substantially change the traditional structures of the Montana Judiciary. It did, however, make a number of modifications. For instance, terms of Supreme Court Justices were extended from six to eight years and District Court Judges terms went from four to six years. Structurally more significant, the new Constitution adopted a version of merit recruitment for judicial officers that has been described as a unique hybrid of the "Missouri Plan". While the Governor appoints judicial officers when vacancies occur, candidates can file against a judge seeking reelection or for a position that is open due to a judge not seeking reelection. After 1974, if a sitting judge is unopposed when seeking reelection, voters are given a "Yes" or "No" choice as to whether to retain the judge.

## SUPREME COURT

The Montana Supreme Court consists of one Chief Justice and six Justices. Each Justice is elected for an eight year term in a statewide nonpartisan election. Terms are staggered so that no more than two justice positions are scheduled for election at the same time. A Justice of the Supreme Court must be a citizen of the United States and have resided in Montana two years immediately before taking office and must have been admitted to practice law in Montana for at least five years prior to the date of appointment or election.

The Chief Justice of the Montana Supreme Court is elected to the position by the electorate in a statewide election. The Chief Justice is the administrative head of the Supreme Court, presides over Court conferences, and represents the Court at official state functions. The Chief Justice presides at all oral argument sessions of the Supreme Court. In the event of the absence of the Chief Justice, the Justice having the

shortest term remaining to be served presides as Acting Chief Justice.

The Montana Supreme Court is the highest court of the State of Montana. It functions both as an appellate court, (Court of Review) and as a court of original jurisdiction. The Supreme Court has original and concurrent jurisdiction over extraordinary writs. Trials are not held by the Supreme Court; oral arguments before the Court consist solely of legal arguments made by attorneys.

The Supreme Court's daily operations are guided by the Court's Internal Operating Rules, which are promulgated by the Court to facilitate the prompt and efficient handling of all matters before it. The Justices meet twice a week in Court conferences where matters presently pending before the Court are discussed. At its Tuesday conference, the Court considers pending petitions for original jurisdiction, motions which should be considered by the full Court, and other miscellaneous matters. At its Thursday conferences, the Court considers proposed opinions, petitions for rehearing, and appeal classifications.

Each appeal that comes before the Court is "classified" by a five Justice panel of the Court. The most common classifications of appeals are (1) full oral argument before the Court sitting en banc, or (2) submitted for decision, either to a panel of five-Justices or to the Court sitting en banc, solely on the briefs filed by the parties without oral argument. Once this classification is made, the case is assigned to a Justice for drafting an opinion. The Court attempts to render its decision within 120 days of submission.

The Supreme Court calendar is divided into "terms". Four such terms must be held each year at the seat of government, commencing on the first Tuesday of March, June, October and December. The Court generally sets an oral argument calendar for each month of the year

except July and August.

The Supreme Court has broad constitutionally-based administrative authority over the Bench and Bar. The Court has supervisory control over all state courts and the responsibility to ensure the efficient and effective operation of the judicial system. The Court has general authority to adopt rules of practice and procedure (subject to disapproval by the Legislature), to maintain high standards of judicial conduct, and to regulate admission to the practice of law and the conduct of members of the legal profession.

The Court fulfills its administrative responsibilities with the assistance of various court officers and advisory boards and commissions. These are explained in detail in another section of this report.

Current members of the Supreme Court are:

**JEAN A. TURNAGE** - Chief Justice. Born March 10, 1926 in St. Ignatius, Montana. Served in the U. S. Air Corps from 1944-1946. Received his law degree from the University of Montana in 1951. Elected County Attorney, Lake County in 1953 and was reelected to the office four times. Elected to the Montana House of Representatives in 1962 and the Montana State Senate in 1964 and served continuously until he assumed the office of Chief Justice on January 7, 1985. His wife's name is Eula Mae and they are the parents of two grown children.

**KARLA M. GRAY** - Justice. Born May 10, 1947 in Escanaba, Michigan. Received both a Bachelor's and Master's degree from Western Michigan University, and her Law Degree from Hastings College of the Law in San Francisco, California in 1976. Prior to her appointment on February 11, 1991, she worked as staff attorney and lobbyist for the Montana Power Company in Butte, Montana.



**JOHN CONWAY HARRISON** - Justice. Born April 28, 1913 in Grand Rapids, Minn. Came to Montana in 1928. Served in the U. S. Army from 1940 to 1946. Received his law degree from George Washington University in 1940. Served as County Attorney in Lewis and Clark County from 1954 to 1960. Elected to the Montana Supreme Court in 1960. Justice Harrison has served longer on the Supreme Court than any other Justice in Montana history. He and his wife Virginia, who died in 1984, were the parents of 3 sons and 3 daughters. He married Ethel Harrison in 1987.

**WILLIAM E. HUNT, SR.** - Justice. Born February 28, 1923 in Tacoma, Washington. Came to Montana in 1945. Received his law degree from the University of Montana in 1955. Engaged in the general practice of law and served as Deputy County Attorney in Hill County and as County Attorney in Liberty County for ten years. Director of Montana Aeronautics Commission, 1970-1975. Was the first State Worker's Compensation Judge, 1975-1981. Elected to the Montana Supreme Court 1984. His wife's name is Mary and they are the parents of five children.

**R. C. McDONOUGH** - Justice. Born December 7, 1924 in Glendive, Montana. Received his law degree from George Washington University in 1949. McDonough served as Glendive City Attorney and Dawson County Attorney and was a delegate to the 1972 Constitutional Convention. Elected District Judge in the Seventh Judicial District in 1982 and served until his appointment to the Supreme Court in May, 1987. His wife's name is Dora and they are the parents of 6 children.

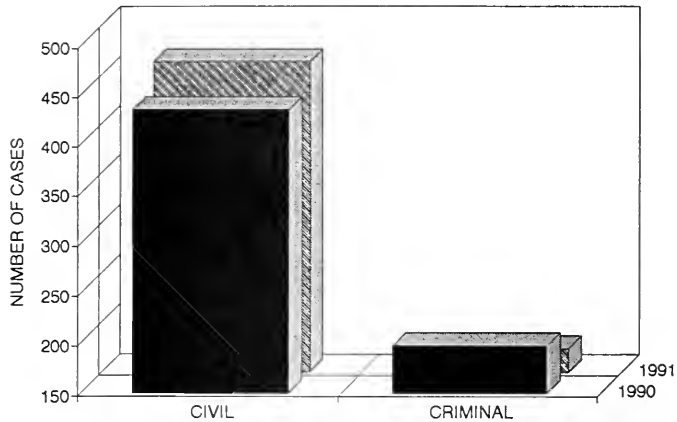
**TERRY N. TRIEWELER** - Justice. Born March 21, 1948 in Dubuque, Iowa. Received both his Bachelor and law degrees from Drake University, Des Moines, Iowa. He was engaged in the private practice of law in Whitefish until 1990 at which time began responsibilities as an instructor of civil procedure at the University of

Montana Law School. In 1990 he was elected to the Montana Supreme Court. He and his wife, Carol, have three daughters, Kathryn Anne, Christina, and Anna.

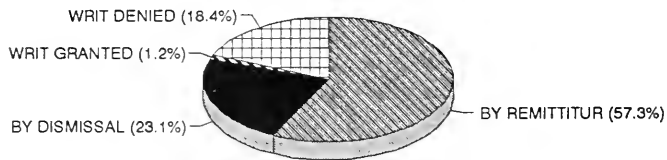
**FRED J. WEBER** - Justice. Born October 6, 1919 in Deer Lodge, Montana. Received B.A. and J.D. degrees from the University of Montana. Served in the infantry in World War II. Engaged in the private practice of law in Havre from 1947 until his election to the Supreme Court. Elected to the Montana Supreme Court in 1980. His wife's name is Phyllis and they are the parents of one daughter and three sons.

## SUPREME COURT CASELOAD STATISTICS

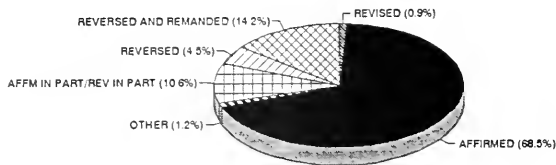
### SUPREME COURT CASELOAD NEW FILINGS



### 1991 SUPREME COURT CASELOAD DISPOSITIONS IN 1991



### 1991 SUPREME COURT CASELOAD FORMAL OPINIONS ISSUED



## 1991 SUPREME COURT CASELOAD STATISTICS

1. Filings carried over from Calendar Year 1990 .....	358
2. New Filings in 1991 .....	636
Civil .....	462
Criminal .....	174
3. Dispositions in 1991 .....	578
By Remittitur .....	330
By Dismissal .....	133
Writ Denied .....	106
Writ Granted .....	7
4. Cases Pending as of December 31, 1991 .....	415
5. Formal Opinions Issued .....	330
Affirmed .....	226
Reversed .....	15
Affirmed in part/Reversed in part .....	35
Reversed and Remanded .....	47
Revised .....	3
Other .....	4

## DISTRICT COURTS

There is a District Court in each of Montana's fifty-six counties. District Courts are Montana's Courts of General Jurisdiction. Montana District Courts exercise original and exclusive jurisdiction over all felonies, original jurisdiction over all cases in law and equity, and the power to issue such writs as are appropriate to their jurisdiction.

Appeals from Courts of Limited Jurisdiction to District Courts must be trials "de novo", which is a completely new trial held as if the original trial had never taken place.

District Judges are elected for six year terms. Requirements for the office of District Judge are United States citizenship, residency of the State for two years and being admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. In the event of a vacancy in the office of District Judge, the Governor appoints a successor from a list of nominees submitted by the Judicial Nominations Commission.

Article VII, Section 6, grants the Legislature the authority to establish Judicial Districts and to provide for the number of Judges in each District. The Legislature may change the number and boundaries of Judicial Districts and the number of Judges in each District. Currently there are 36 District Court Judges in Montana in 20 Judicial Districts.

## JUDICIAL DISTRICT REPORTS

(Where a report was submitted, the following information is in the words of the Presiding Judge).

### 1ST JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Lewis and Clark and Broadwater

NO. OF JUDGES: Three

1990 POPULATION: 50,566

AREA IN SQUARE MILES: 4,669

DENSITY PER SQUARE MILE: 10.83

#### DISTRICT JUDGES:

The Honorable Thomas Honzel  
The Honorable Jeffrey Sherlock  
The Honorable Dorothy McCarter

#### CLERKS OF THE DISTRICT COURT:

Lewis and Clark Co.	Clara Gilreath
Broadwater County	Nellie B. Sayer

## FIRST JUDICIAL DISTRICT

The First Judicial District consists of Lewis and Clark and Broadwater Counties. The Honorable Thomas C. Honzel, Dorothy McCarter, and Jeffrey M. Sherlock are the district court judges for this district. All three judges handle civil, criminal, and sanity cases. Judge Honzel is the youth court judge; Judge McCarter is the probate judge. Judge Sherlock and Judge McCarter each year travelling to Broadwater County. Because Helena is the state capitol, the District

Court hears a number of cases which have statewide significance. For example, during 1991, Judge McCarter heard the case involving the conditions at the Warm Springs State Hospital. Judge Honzel handled the strike at the institutions and the challenge to the grizzly bear hunt. This month, Judge Sherlock is hearing the issue of whether the Governor has the constitutional authority to order cuts in the budgets of state agencies. These cases often involve complex legal issues and take a great deal of the Court's time.

The First Judicial District has a new restitution officer, Anne Thomas. She is now working for the newly organized District Court Services Department which includes Youth Court Services, the Restitution program for adults and juveniles and the Community Service Project.

We also have a new secretary, Karen Bowers, who is the former Public Administrator for Lewis and Clark County. Tonna Strasko is the Court Administrator. At the time of this writing, the three law clerks for the three judges are: Pam Fruth for Judge Honzel; Ruth Cox for Judge McCarter; and Jack Morris for Judge Sherlock.

We have three court reporters. Tim Thane, reporter for Judge McCarter; Penny Doig Martin, reporter for Judge Sherlock; and Robyn Ori Morstein, reporter for Judge Honzel.

From January 1991 to November 1991, the First Judicial District had twenty jury trials (seventeen in Lewis and Clark County and three in Broadwater County). Of the Lewis and Clark County trials, three were criminal trials, eleven were civil trials, and three were appeals for a total cost of \$25,029.32. This total amount includes jury fees, witness fees, and jury meals.

Computers are a tremendous help with the workload for the First Judicial District and we appreciate the cooperation received from the Montana Supreme Court for this computer

system.

Cases filed in the 1st Judicial District in 1991:

Criminal	295	9.53%
Civil	1835	59.29%
Dom. Rel.	468	15.12%
Adoption	55	1.78%
Sanity	66	2.13%
Juvenile	182	5.88%
Probate	194	6.27%

TOTAL 3,095

## 2ND JUDICIAL DISTRICT 1991

### COUNTIES IN THE DISTRICT:

Silver Bow

1990 POPULATION: 33,737

AREA IN SQUARE MILES: 715

DENSITY PER SQUARE MILE: 47.18

### DISTRICT JUDGES:

The Honorable Mark P. Sullivan  
The Honorable James Purcell

### CLERK OF THE DISTRICT COURT:

Silver Bow County      Lori A. Maloney

## SECOND JUDICIAL DISTRICT

The Second Judicial District is a one county, two judge Judicial District which serves approximately 33,737 people. The Judicial District is presided over by Judge Mark P. Sullivan who has served since 1980 and James Purcell who has served since 1990.

The Second Judicial District is the smallest Judicial District in area (715 square miles) but has the highest population density with 47.18 people per square mile.

Cases filed in the 2nd Judicial District in 1991.

Criminal	102	8.56%
Civil	623	52.31%
Dom. Rel.	250	20.99%
Adoption	18	1.51%
Sanity	31	2.60%
Juvenile	35	2.94%
Probate	132	11.08%

TOTAL 1,191

## 3RD JUDICIAL DISTRICT

1991

### COUNTIES IN THE DISTRICT:

Deer Lodge, Granite and Powell

NO. OF JUDGES: One

1990 POPULATION: 19,326

AREA IN SQUARE MILES: 4,809

DENSITY PER SQUARE MILE: 4.02

### DISTRICT JUDGE:

The Honorable Ted L. Mizner

### CLERKS OF THE DISTRICT COURT:

Deer Lodge Co.:	Theresa Sladich
Granite Co.	Beverly L. Kulaski
Powell Co.	Mary Ann McKee

## THIRD JUDICIAL DISTRICT

The Third Judicial District is comprised of Anaconda-Deer Lodge County, Powell County and Granite County. Unique to the district is the fact that both the Montana State Prison, the Women's Correctional Center, the Galen State Hospital, and the Warm Springs State Hospital are located within this jurisdiction. Because all of the mental health commitments from across the State are reviewed in this jurisdiction, a special courtroom has been established on the grounds of the State Hospital for twice monthly court sessions. In addition, all felony crimes committed within the prison as well as all inmate escapes from the prison and its numerous satellite

institutions are processed in the Powell County District Court. Writs of Habeas Corpus, civil rights complaints and miscellaneous civil actions filed by prison inmates are also processed in Powell County. The proposed phasing out of Galen State Hospital and the relocation of the Women's Correctional Center are major concerns in the district.

A new proposal that has been suggested is a closed-circuit television system that would allow the Court to conduct arraignments and preliminary matters involving prison cases without the necessity of transporting inmates to court. The Court is also working with the prison administration, juvenile probation and local law enforcement officials on a modified "scared straight" program for serious juvenile offenders. It is hoped that this program will be a valuable addition to our limited juvenile services. Over thirty felony drug cases have been added to the caseload this year as a result of a drug sweep by the Southwest Montana Drug Task Force.

The Youth Court, through it's Chief Probation Officer, Gary Loshesky, continues to manage the non-profit corporation that operates the Rock Creek Youth Camp. The Youth Camp provides youth in the district and in the surrounding area with summer-long outdoor recreational opportunities. A new part-time Powell County youth probation officer, Bert Luce, assumed his duties in January, 1991.

Friendly people, beautiful scenery and cooperative lawyers continue to make the Third Judicial District a pleasant place to live and work.

Cases filed in the 3rd Judicial District in 1991:

Criminal	106	13.28%
Civil	235	29.45%
Dom. Rel.	153	19.17%
Adoption	12	1.50%
Sanity	89	11.15%
Juvenile	53	6.64%

Probate	150	18.80%
TOTAL	798	

#### 4TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Mineral, Missoula and Ravalli

NO. OF JUDGES: Four

1990 POPULATION: 106,623

AREA IN SQUARE MILES: 6,216

DENSITY PER SQUARE MILE: 17.15

#### DISTRICT JUDGES:

The Honorable Jack L. Green  
The Honorable John S. Henson  
The Honorable Douglas G. Harkin  
The Honorable Ed McLean

#### CLERKS OF THE DISTRICT COURT:

Mineral County	Audrey Peden
Missoula County	Kathleen Breuer
Ravalli County	Debbie Harmon

#### FOURTH JUDICIAL DISTRICT

The Fourth Judicial District serves the counties of Missoula, Ravalli and Mineral Counties and has four District Judges: Judges Jack Green, Douglas Harkin, John Henson and Ed McLean.

Audrey Peden is the Clerk of Court in Mineral County where she is assisted with one deputy. Debbie Harmon is assisted by four deputies in Ravalli County, while Missoula County Clerk of Court, Kathleen Breuer is assisted by twelve deputies.

The Fourth Judicial District is experimenting with a Special Master program in Missoula County. The Special Master will handle domestic relation matters including contested hearings. The response of the attorneys has been positive although there are some "bugs" in the system that have to be worked out.

The District is also utilizing settlement conferences to attempt to alleviate the trial calendar. The conferences have been very successful thus far.

Overall the four Departments of the District have kept very current on the caseload that continues to increase, but it appears that we need a successful Special Master Program and Settlement Conference agenda if we are going to keep current with the increasing caseload.

Kathleen Breuer has greatly assisted in Missoula by converting her office over to computers and increasing the efficiency of her office while both Debbie Harmon in Ravalli County and Audrey Peden in Mineral County keep each Department current and advised of any pending cases that need immediate attention.

Cases filed in the 4th Judicial District in 1991:

Criminal	778	18.17%
Civil	1740	40.64%
Dom. Rel.	973	22.78%
Adoption	103	2.41%
Sanity	72	1.68%
Juvenile	279	6.59%
Probate	336	7.85%
<b>TOTAL</b>	<b>4,281</b>	

#### 5TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Beaverhead, Jefferson and Madison

#### NO. OF JUDGES: One

1990 POPULATION: 22,338

AREA IN SQUARE MILES: 10,731

DENSITY PER SQUARE MILE: 2.08

#### DISTRICT JUDGE:

The Honorable Frank M. Davis

#### CLERKS OF THE DISTRICT COURT:

Beaverhead Co.	John Poundstone
Jefferson Co.	Marilyn J. Stevens
Madison Co.	Jerry R. Wing

#### **FIFTH JUDICIAL DISTRICT**

The Fifth Judicial District is comprised of three counties, Beaverhead, Jefferson and Madison Counties. The judicial district is a single judge entity with a caseload approaching 700 divided between the three counties. To meet its weekly law and motion calendar, the presiding judge and his staff travel a minimum of 350 miles. The staff consists of a court reporter and an administrative assistant. The latter serves in multiple capacities: librarian, court attendant, scheduling clerk, paralegal and secretary. Three exceptional Clerks of Court make valuable contributions to efficient



caseload management. A law clerk is badly needed.

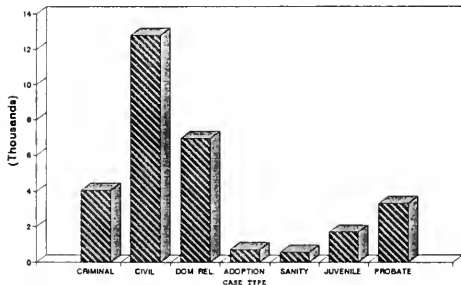
The trial calendar is current as a result of accelerated status and settlement conferences, and a court policy making six person juries the rule rather than the exception. The Bar with rare exception has been cooperative. This Court believes six person juries should be legislatively mandated in all civil cases, for judicial economy and for efficiency.

The biggest challenge facing the Court is an inordinate number of juvenile matters, and sex offenses, adults and juveniles, for which neither the Court, the social workers, or society has an explanation or solution.

Cases filed in the 5th Judicial District in 1991:

Criminal	158	19.80%
Civil	312	39.10%
Dom. Rel.	121	15.16%
Adoption	35	4.39%
Sanity	8	1.00%
Juvenile	60	7.52%
Probate	104	13.03%
<b>TOTAL</b>	<b>798</b>	

**MONTANA DISTRICT COURT**  
TOTAL CASES FILED - 1991



## 6TH JUDICIAL DISTRICT

1991

### COUNTIES IN THE DISTRICT:

Park and Sweet Grass

NO. OF JUDGES: One

1990 POPULATION: 17,609

AREA IN SQUARE MILES: 4,466

DENSITY PER SQUARE MILE: 3.94

DISTRICT JUDGE:

The Honorable Byron L. Robb

CLERKS OF THE DISTRICT COURT:

Park Co. June Little  
Sweet Grass Co. Patty Jo Henthorn

## **SIXTH JUDICIAL DISTRICT**

The Sixth Judicial District is a single judge district which includes Park and Sweet Grass counties, and which has an annual caseload of about 576. Judge Byron L. Robb is completing his seventh year in office, and remains committed to getting the judicial work done, rather than talking about it.

Judge Robb believes the biggest present judicial challenge in his district and the rest of the state is handling the continuous avalanche of criminal and delinquent youth cases, and the legislative problem of where to house those persons convicted of crime and needing detention.

Cases filed in the 6th Judicial District in 1991:

Criminal	63	10.92%
Civil	213	36.92%
Dom. Rel.	159	27.56%
Adoption	12	2.08%
Sanity	12	2.08%
Juvenile	50	8.67%
Probate	68	11.79%
<b>TOTAL</b>	<b>577</b>	

### 7TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Dawson, McCone, Prairie, Richland  
and Wibaux

NO. OF JUDGES: Two

1990 POPULATION: 24,964

AREA IN SQUARE MILES: 9,676

DENSITY PER SQUARE MILE: 2.58

#### DISTRICT JUDGES:

The Honorable Dale Cox  
The Honorable Richard Phillips

#### CLERKS OF THE DISTRICT COURT:

Dawson Co.	Ardelle Adams
McCone Co.	Betty L. Robinette
Prairie Co.	Gladys Helen Young
Richland Co.	Arlene Riggs
Wibaux Co.	Roger J. Barnaby

The Seventh Judicial District is comprised of five counties, Dawson, McCone, Prairie, Richland and Wibaux; it is divided into two departments with Judge Dale Cox presiding over Department 1, Dawson, McCone, Prairie and Wibaux Counties; and Judge Richard Phillips presiding over Department 2, Richland County. The caseload in the district for 1991 is approximately the same as that of last year at this time. as with many other judicial districts, criminal and dissolution and custody cases consume the greatest share of the Court's time.

The Conference Program implemented by Judge Cox in 1988 for Department 1 continues to work well. All old civil and probate cases have been disposed of, and all civil cases filed over 90 days have been set for trial. This program helps the Judge remain current, and is a service to the public and the Bar as well.

Two major projects are currently underway in the Seventh Judicial District. First is an effort to enter the twentieth century by the addition of computers to the Judges' Chambers and the Clerks' offices in both Dawson and Richland Counties. Since few of us have any experience operating computers, this should prove interesting. The second project involves Judge Phillips rewriting the local court rules. Although amended from time to time, these have not been completely revised since 1956.

Cases filed in the 7th Judicial District in 1991:

Criminal	118	13.50%
Civil	332	37.99%
Dom. Rel.	169	19.34%
Adoption	25	2.86%
Sanity	25	2.86%
Juvenile	34	3.89%
Probate	171	19.57%

**TOTAL** 874

SEVENTH JUDICIAL DISTRICT

### 8TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Cascade

NO. OF JUDGES: Three

1990 POPULATION: 77,293

AREA IN SQUARE MILES: 2,661

DENSITY PER SQUARE MILE: 29.05

#### DISTRICT JUDGES:

The Honorable Joel G. Roth  
The Honorable John M. McCarvel  
The Honorable Thomas M. McKittrick

#### CLERK OF THE DISTRICT COURT:

Cascade Co. Nancy Morton

1991 there were 2,583 cases filed which include 1,193 civil, 205 criminal and 644 domestic relations cases.

Cascade County was involved in a labor strike from August 16, 1991 through August 28, 1991. The Courts remained opened through the cooperation of the labor union and the county commissioners with the district court.

District Court funding continues to be of great concern. The six mill levy (7-6-2511, MCA) does not generate sufficient revenue to run the court. House Bill 312 (which amends 61-3-537, MCA) will help, but is not a permanent solution to the funding problem.

Cases filed in the 8th Judicial District in 1991:

Criminal	282	9.51%
Civil	13368	45.06%
Dom. Rel.	728	24.55%
Adoption	110	3.71%
Sanity	16	0.54%
Juvenile	200	6.75%
Probate	293	9.98%

TOTAL 2,965

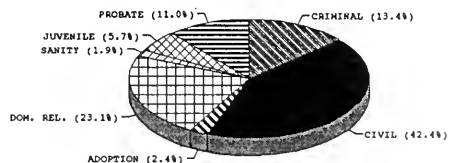
### EIGHTH JUDICIAL DISTRICT

The Eighth Judicial District serves Cascade County. The three judges for the district are: The Honorable Thomas M. McKittrick, John M. McCarvel, and Joel G. Roth. The youth court duties are shared every two years on a rotation basis.

Although the district has a heavy case load, no judge has a law clerk. Each judge does have a court reporter and a secretary. There are five public defenders. Two of the public defenders share the duties and the salary of one public defender position.

From January 1, 1991 through November 14,

### MONTANA DISTRICT COURT TOTAL CASES FILED - 1991



**9TH JUDICIAL DISTRICT**

1991

**COUNTIES IN THE DISTRICT:**

Glacier, Pondera, Teton and Toole

**NO. OF JUDGES:** One

**1990 POPULATION:** 29,793

**AREA IN SQUARE MILES:** 10,496

**DENSITY PER SQUARE MILE:** 2.84

**DISTRICT JUDGE:**

The Honorable Ronald D. McPhillips

**CLERKS OF THE DISTRICT COURT:**

Glacier Co.	Mary Hippen
Pondera Co.	Anita White Jones
Teton Co.	Karen Peebles*
	Emile Kimmet**
Toole Co.	Penny Underdahl

\* Resigned 5-20-91

\*\* Appointed 7-16-91

Cases filed in the 9th Judicial District in 1991:

Criminal	152	14.86%
Civil	492	48.09%
Dom. Rel.	144	14.08%
Adoption	19	1.86%
Sanity	4	0.39%
Juvenile	53	5.18%
Probate	159	15.54%

**TOTAL** 1,023

**10TH JUDICIAL DISTRICT**

1991

**COUNTIES IN THE DISTRICT:**

Fergus, Judith Basin and Petroleum

**NO. OF JUDGES:** One

**1990 POPULATION:** 14,797

**AREA IN SQUARE MILES:** 7,777

**DENSITY PER SQUARE MILE:** 1.90

**DISTRICT JUDGE:**

The Honorable Peter L. Rapkoch

**CLERKS OF THE DISTRICT COURT:**

Fergus Co.	Greta M. Ross
Judith Basin Co.	Acelia "Ann" Leach
Petroleum Co.	Bonny L. Allen

**NINTH JUDICIAL DISTRICT**

The Ninth Judicial District covers Glacier, Pondera, Teton and Toole Counties. The presiding judge is the Honorable Ronald D. McPhillips who has served in this capacity since 1963.

## TENTH JUDICIAL DISTRICT

Three counties comprise the Tenth Judicial District: Fergus, Judith Basin and Petroleum. One judge, the Honorable Peter L. Rapkoch, handles the district. Each second and fourth Monday will find the judge in Stanford (Judith Basin County), and in Winnett, (Petroleum County), the first and third Mondays, if needed. Law and Motion days are Tuesdays in Fergus County, which includes Youth Court matters.

The Judge has one court reporter, Audrey Petersen, who travels with him to Judith Basin and Petroleum counties, as well as doing the work load demanded in Fergus County. He also has a secretary, Diane Amdahl. At the present time, he is awaiting the arrival of a computer which will expedite much of the work and increase productivity of the court.

From January, 1991, through September, 1991, there have been a total of 13 jury trials in his Judicial District and 9 non-jury trials. Of the jury trials 9 were criminal trials and 4 were civil trials. The Judge also handled 6 adoption petitions, where is one of the joys of the position. Any there was a myriad of other assorted hearings and matters to come before him to keep the calendar full.

### Cases filed in the 10th Judicial District in 1991:

Criminal	48	9.28%
Civil	177	34.24%
Dom. Rel.	95	18.38%
Adoption	22	4.26%
Sanity	10	1.93%
Juvenile	40	7.74%
Probate	125	24.18%
TOTAL	517	

## 11TH JUDICIAL DISTRICT

1991

### COUNTIES IN THE DISTRICT:

Flathead

NO. OF JUDGES: Two

1990 POPULATION: 58,782

AREA IN SQUARE MILES: 5,137

DENSITY PER SQUARE MILE: 11.44

### DISTRICT JUDGES:

The Honorable Michael H. Keedy  
The Honorable Leif Barton Erickson

### CLERK OF THE DISTRICT COURT:

Flathead Co.

John Van

## ELEVENTH JUDICIAL DISTRICT

The Eleventh Judicial District is a two judge, one county Judicial District. The District is comprised of Flathead County. The District Judges are Michael H. Keedy who has served since 1963, and Leif Erickson who has served since 1985.

### Cases filed in the 11th Judicial District in 1991:

Criminal	268	14.84%
Civil	583	32.28%
Dom. Rel.	627	34.72%
Adoption	51	2.82%
Sanity	30	1.66%
Juvenile	36	1.99%
Probate	211	11.68%
TOTAL		1,806

### 12TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Chouteau, Hill and Liberty

NO. OF JUDGES: One

1990 POPULATION: 25,305

AREA IN SQUARE MILES: 8,293

DENSITY PER SQUARE MILE: 3.05

DISTRICT JUDGE:

The Honorable John Warner

#### CLERKS OF THE DISTRICT COURT:

Chouteau Co.	Louise V. Sagan
Hill Co.	Dena Tippetts
Liberty Co.	Patricia Seidlitz

5487, and Chester at (406)759-5799.

During the year of 1991, 313 civil cases, 61 criminal cases and 83 probate cases have been filed in Hill County through October.

Through the first 10 months of 1991, 15 jury trials were conducted in Hill County. Four of the 15 trials were criminal trials. Two of the civil trials were juvenile trials. The total cost of all trials was \$20,208.50. Only \$5,647.64 of that cost was reimbursed by the State.

There were 317 cases, both civil and criminal, disposed of either by trial, dismissed, judgement or other orders. 87 probates were closed.

Chouteau County had one jury trial and there were 54 civil cases, 45 probate cases, and 23 criminal cases.

There were 15 civil cases, 6 criminal cases and 17 probate cases filed in Liberty County through October.

In Youth Court 449 referrals have been received. There were 188 first time offenders. Seventeen youths have been placed with various agencies from this district. The District Court has collected \$2,394.06 as restitution from youth offenders.

### **TWELFTH JUDICIAL DISTRICT**

The Twelfth Judicial District is a one judge, John Warner, district composed of Hill, Chouteau and Liberty Counties. The caseload is approximately 70% Hill County, 23% Chouteau County and 7% Liberty County.

Judge Warner has updated the District Court Rules of Montana Twelfth Judicial District. Copies are available in the Hill County Clerk of Court's office for a fee of \$3.00.

Documents may be telefaxed to the Court in Fort Benton at (406)622-3631, in Havre at (406)265-

Cases filed in the 12th Judicial District in 1991:

Criminal	125	14.67%
Civil	272	31.92%
Dom. Rel.	205	24.06%
Adoption	22	2.58%
Sanity	7	0.82%
Juvenile	60	7.04%
Probate	161	18.90%
TOTAL	852	

### 13TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Big Horn, Carbon, Stillwater and  
Yellowstone

NO. OF JUDGES: Five

1990 POPULATION: 137,698

AREA IN SQUARE MILES: 11,525

DENSITY PER SQUARE MILE: 11.95

#### DISTRICT JUDGES:

The Honorable William J. Speare  
The Honorable Robert W. Holmstrom  
The Honorable G. Todd Baugh  
The Honorable Russell K. Fillner  
The Honorable Maurice R. Colberg

#### CLERKS OF THE DISTRICT COURT:

Big Horn Co.	Janice Heath
Carbon Co.	Gayle M. Hilderman
Stillwater Co.	Marlene Johnson
Yellowstone Co.	Charmaine R. Fisher

### THIRTEENTH JUDICIAL DISTRICT

The Thirteenth Judicial District consists of the counties of Big Horn, Carbon, Stillwater and Yellowstone. The five Judges for this District are G. Todd Baugh, Maurice R. Colberg, Russell K. Fillner, Robert W. Holmstrom and William J. Speare. Civil and criminal Law and Motion is held four times per week in Yellowstone County and twice monthly in the counties of Big Horn, Carbon and Stillwater. Those counties are rotated among the Judges annually with two Judges being assigned to Big Horn County, two Judges being assigned to Carbon County and one Judge being assigned to Stillwater County.

Each Judge has Chambers located in the Yellowstone County Courthouse in Billings and is provided with a staff consisting of a secretary, a law clerk, a court reporter and a Deputy Clerk of Court. Cases filed in Yellowstone County are assigned on a random basis with an equal number being assigned to each Judge with the exception that all Youth Court matters are handled by Judges Baugh and Colberg, and a greater number of Domestic Relation cases are assigned to Judges Fillner, Holmstrom and Speare than the number assigned to Judges Baugh and Colberg.

The counties within the Thirteenth Judicial District have been able to provide adequate funding to provide the staff and other facilities needed by the Court. The only facility that is needed is a fifth Courtroom in the Yellowstone County Courthouse. Currently, there are four Courtrooms which are shared by the five Judges. Plans are underway to construct a new Courtroom as part of a renovation project of the Yellowstone County Courthouse which is scheduled to be completed by June of 1993.

The caseload within the District is heavy, however, with the support staff provided to each Judge, the Courts within the District are being kept current.

Cases filed in the 13th Judicial District in 1991:

Criminal	690	12.55%
Civil	2,390	43.45%
Dom. Rel.	1,441	26.20%
Adoption	112	2.04%
Sanity	129	2.35%
Juvenile	273	4.96%
Probate	465	8.45%

TOTAL 5,500

**14TH JUDICIAL DISTRICT**

1991

**COUNTIES IN THE DISTRICT:**

Golden Valley, Meagher, Musselshell  
and Wheatland

**NO. OF JUDGES:** One

**1990 POPULATION:** 9,070

**AREA IN SQUARE MILES:** 6,837

**DENSITY PER SQUARE MILE:** 1.33

**DISTRICT JUDGE:**

The Honorable Roy C. Rodeghiero

**CLERKS OF THE DISTRICT COURT:**

Golden Valley Co.	Aileen Mattheis
Meagher Co.	Kenneth K. Twichel
Musselshell Co.	Dona C. Robson
Wheatland Co.	Mary Helen Muggenburg

It's business as usual in the 14th Judicial District and the hustle and bustle continues.

In addition to the regular court duties, we encourage and regularly invite classes from schools to our courtroom for educational programs. These programs range from grade school mock jury trials of Goldilocks with regular attorneys and students participating in educational presentations and observations of regular jury trials by high school students.

The 14th Judicial District is a single judge district and consists of the Counties of Musselshell, Golden Valley, Wheatland and Meagher. The district is approximately 200 miles east and west across the central part of Montana with nearly 7,000 square miles. This area is larger than many states. The distance between the two further most county seats of Roundup and White Sulphur Springs is 130 miles.

The district includes both plains and mountains in a highly agricultural and ranch based economy in addition to oil and gas, mining, lumbering and recreation. The Musselshell and Smith Rivers flow in this district. The Snowy, Belt, Castle, Crazy and Bull Mountains are found therein.

The District is sparsely populated with quality people. Much windshield time is spent in carrying out the duties of District Judge in this district. This is no doubt the best Judicial District in the State to serve as District Judge.

Cases filed in the 14th Judicial District in 1991:

Criminal	34	10.30%
Civil	119	36.06%
Dom. Rel.	58	17.58%
Adoption	11	3.33%
Sanity	6	1.82%
Juvenile	42	12.73%
Probate	60	18.18%

TOTAL 330

FOURTEENTH JUDICIAL DISTRICT



### 15TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Daniels, Roosevelt and Sheridan

NO. OF JUDGES: One

1990 POPULATION: 17,916

AREA IN SQUARE MILES: 5,501

DENSITY PER SQUARE MILE: 3.26

#### DISTRICT JUDGE:

The Honorable M. James Sorte

#### CLERKS OF THE DISTRICT COURT:

Daniels Co.	Patricia McDonnell
Roosevelt Co.	M. Lorene Knudson*
	Patricia A. Stennes**
Sheridan Co.	Cheryl A. Olson

\* Retired 4-30-91

\*\* Appointed 5-1-91

Richards was appointed Deputy Clerk.

William Lumpkin, Chief Probation Officer, retired and Joe Connell was hired to fill that position.

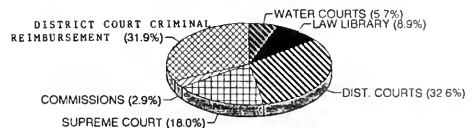
Both the District Court and the Clerk of Court's office have installed computer systems. Juvenile Probation also is now reporting via computer to a state-wide system supervised by the Board of Crime Control.

Cases filed in the 15th Judicial District in 1991:

Criminal	18	4.43%
Civil	154	37.93%
Dom. Rel.	80	19.70%
Adoption	10	2.46%
Sanity	2	0.49%
Juvenile	22	5.42%
Probate	120	29.56%

TOTAL 406

### MONTANA JUDICIARY STATE FUNDING BY PROGRAM FY 92



### FIFTEENTH JUDICIAL DISTRICT

The Fifteenth Judicial District, consists of Daniels, Sheridan and Roosevelt Counties. The District is bordered by Saskatchewan, Canada and North Dakota. We had changes in Court officers during 1991.

The Clerk of Court, M. Lorene Knudson retired and Patricia Stennes, Deputy Clerk, was appointed to fill the unexpired term. Marlene

### 16TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Carter, Custer, Fallon, Garfield,  
Powder River, Rosebud and  
Treasure

NO. OF JUDGES: Two

1990 POPULATION: 31,502

AREA IN SQUARE MILES: 22,300

DENSITY PER SQUARE MILE: 1.41

#### DISTRICT JUDGES:

The Honorable Kenneth R. Wilson  
The Honorable Joe L. Hegel

#### CLERKS OF THE DISTRICT COURT:

Carter Co.	Carole Carey
Custer Co.	Margaret Reid
Fallon Co.	Carol Wade
Garfield Co.	Charlotte Herbold
Powder River Co.	Arlynn Archer
Rosebud Co.	Collene Hill
Treasure Co.	Sally Van Hemerlyck

District, Kenneth R. Wilson in Department 1, and Joe L. Hagel in Department 2. Neither judge has a secretary or law clerk. Given the sparse population and large distances traveled to serve in rural districts, it would be extremely helpful if the judges of such districts had access to a law clerk, employed by the court system in Helena.

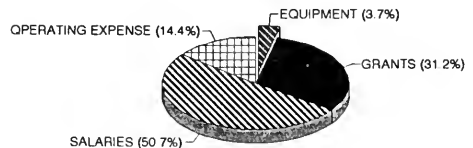
The seven counties have approved the purchase of a laptop computer for Judge Hegel, who travels extensively throughout the district. Some counties are also acquiring fax capability which will be available to the court. The district is also looking forward to implementing the automation recommendations of the Supreme Court Commission as they become available.

Cases filed in the 16th Judicial District in 1991:

Criminal	157	14.67%
Civil	376	35.14%
Dom. Rel.	238	22.24%
Adoption	27	3.46%
Sanity	30	2.80%
Juvenile	64	5.98%
Probate	178	16.64%

TOTAL 1,070

### **MONTANA JUDICIARY** STATE FUNDING FY 92



### **SIXTEENTH JUDICIAL DISTRICT**

The Sixteenth Judicial District encompasses seven Southeastern Montana Counties: Carter, Custer, Fallon, Garfield, Powder River, Rosebud and Treasure, and some 21,815 square miles with a population of only about 37,000.

There are two Judges in the Sixteenth Judicial

### 17TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Blaine, Phillips and Valley

NO. OF JUDGES: One

1990 POPULATION: 20,066

AREA IN SQUARE MILES: 14,462

DENSITY PER SQUARE MILE: 1.39

#### DISTRICT JUDGE:

The Honorable Leonard H. Langen

#### CLERKS OF THE DISTRICT COURT:

Blaine Co.	Kay Johnson
Phillips Co.	Frances M. Webb
Valley Co.	Patricia A. Hill

### SEVENTEENTH JUDICIAL DISTRICT

The Montana Seventeenth Judicial District consists of the counties of Valley, Phillips, and Blaine. This is a one Judge district, he being the Honorable H. Langen, who has his Chambers located in the Valley County Courthouse at Glasgow, Montana. The Judge speaks.

I was pleased to discover that the Seventeenth Judicial District has received some recognition for its pro bono activities. On page 6 of the State Bar's pro bono "Action Plan" appeared this compliment, "In many ways, the 17th Judicial

District is a model for judicial involvement."

This arose out of a Resolution adopted at the 1989 Spring meeting of the Seventeenth Judicial District Bar Association, which in essence said that all members of the Association shall participate in performing pro bono work. In accordance with the Resolution, I, as District Judge, furnished a list of all Bar members to Montana Legal Services with an order that Legal Services should assign the pro bono work on a case-by-case basis, in the order in which the names appeared on the list.

This is a simple program, and I have been told that it is working. On October 18, 1991, I attended the fall meeting of the Seventeenth Judicial District Bar. I called their attention to the recognition we had received for the Bar's pro bono services. The association's response was prompt and decisive. They immediately passed a Second Resolution, the same as the one passed in the spring of 1989.

The Seventeenth Judicial District is moving toward full computerization. Blaine and Phillips County are well along on the program, and the Clerk in Valley County should have her equipment this fall.

I have been using a Lap Top Computer for the past two years and have become quite proficient with the Word Perfect Program, and have installed an "Info Select" program which I use for calendaring and as a tickler system. Calendaring and keeping track of the cases through a tickler system is essential in this large district, which requires so much traveling. With these tools it is easier to make each 320 or more mile trip more productive.

The Seventeenth Judicial District has had a Settlement Conference Program in place for the past three years. Settlement Conferences are scheduled after Discovery has been completed. Our statistics show that about 8 out of 10 cases

which are set for trial are settled shortly before, at the time of, or a few days after the Settlement Conference date.

Cases filed in the 17th Judicial District in 1991:

Criminal	66	11.72%
Civil	225	39.96%
Dom. Rel.	110	19.54%
Adoption	21	3.73%
Sanity	4	0.71%
Juvenile	27	4.80%
Probate	110	19.54%
TOTAL	563	

**18TH JUDICIAL DISTRICT**

1991

**COUNTIES IN THE DISTRICT:**

Gallatin

**NO. OF JUDGES:** Two

**1990 POPULATION:** 50,310

**AREA IN SQUARE MILES:** 2,517

**DENSITY PER SQUARE MILE:** 19.99

**DISTRICT JUDGES:**

The Honorable Thomas A. Olson  
The Honorable Larry Moran

**CLERK OF THE DISTRICT COURT:**

Gallatin Co.            Lorraine Van Ausdol

The 18th Judicial District includes all of Gallatin County and is served by two District Judges: Thomas A. Olson, Department No. 1 and Larry W. Moran, Department No. 2. Facilities for both courts are located in the Law and Justice Center, 615 South 16th Avenue in Bozeman.

Fire - On September 30, 1990, the Law and Justice Center was partially destroyed by fire and the entire building had extensive smoke damage. The District Courts were relocated several times to temporary quarters before returning to the Law and Justice Center the end of January, 1991. The months we were required to operate outside our courtrooms were very trying to say the least, but thanks to all court personnel and use of facilities in neighboring courts, the court system continued to effectively function.

Mediation - On May 1, 1991, Ms. Nona Faith was retained as Judge Olson's Law Clerk and Mediator. Ms. Faith previously was in private practice in Bozeman for several years prior to coming to the court. To date, Ms. Faith has mediated 16 cases; 14 of the cases involved dissolutions of marriage. There was 1 involving a breach of contract and 2 involving automobile accidents/property damage matters. Of these 16 mediation, 13 have settled, 2 others have agreed to come back for a second session and the only remaining case which did not reach settlement hinged on a question of law as to one issue only. It is anticipated that all other issues may ultimately be resolved through mediation. We estimate that if the 13 settled cases had gone to trial, they would have required 3 to 4 weeks of trial time requiring the presence of the judge, court reporter, clerk, the parties and their attorneys. Attorneys for the parties participated in 7 of the mediation. Mediation varied between 1 hour and 8 1/2 hours, with an average mediation lasting 3 1/2 to 4 1/2 hours. Judge Moran's law clerk is also involved in mediation as well with similar results.

EIGHTEENTH JUDICIAL DISTRICT

Court Reporting - Judge Olson has completed 17

months of electronic court reporting. He continues to be very pleased with the quality and accuracy of the record and the flexibility it gives him in reviewing testimony of submitted cases. Frequently, attorneys have commented that they like the option of being able to replay actual testimony for review.

Grant - In September, 1991, we received a grant from the Supreme Court Administrator's Office for purchase and installation of a local area computer network. The grant together with matching funds from Gallatin County total approximately \$50,000. The District Judges, Clerk of Court and Justice Court will be on the network, with plans of adding Youth Probation at a later date. This represents several years of planning and we are very anxious to complete this project.

Guardianships/Conservatorships - Judge Olson and Judge Moran are very concerned about the court's responsibilities in guardianships and conservatorships. They are devoting considerable time toward developing judicial standards for proper judicial supervision in these types of cases.

Law Week - In May, we held our annual "Law Week", which is a high point in Gallatin County. The Gallatin County Bar Association sponsored a reception for the Supreme Court and the court heard oral argument in two criminal cases. The event was well attended by both college and high school classes.

Water - The Gallatin Valley continues to be one of the most heavily irrigated areas in Montana. This district historically has worked closely with the water users of the Gallatin Valley. The Court has appointed five water commissioners for the irrigation season.

Cases filed in the 18th Judicial District in 1991:

Criminal	177	11.43%
Civil	609	39.32%
Dom. Rel.	510	32.94%
Adoption	31	2.00%
Sanity	22	1.42%
Juvenile	50	3.23%
Probate	150	9.68%

TOTAL 1,549

### 19TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Lincoln

NO. OF JUDGES: One

1990 POPULATION: 17,454

AREA IN SQUARE MILES: 3,714

DENSITY PER SQUARE MILE: 4.70

DISTRICT JUDGE:

The Honorable Robert Keller

CLERK OF THE DISTRICT COURT:

Lincoln Co.

Lucille Briggs

### NINETEENTH JUDICIAL DISTRICT

During the year 1991, 232 civil cases, 148 criminal cases and 53 probates have been filed, showing an increase in civil and criminal cases at this same time last year. There have been eleven jury trials conducted so far this year as opposed to thirteen in 1990, with fourteen more scheduled.

The most significant development was hiring a Law Clerk. The backlog is disappearing and the current cases are current. We are just starting to use the Clerk as a Special Master in dissolutions, and that's a real relief.

The Chief Probation Officer, Marie Studebaker, was just elected as Juvenile Probate Officer of the Year by her colleagues, a well-deserved award. She is responsible for establishing, and getting accreditation for the Troy jail as the Youth Detention facility (with the Troy adults being kept in the county jail in Libby.)

#### Cases filed in the 19th Judicial District in 1991:

Criminal	186	24.47%
Civil	302	39.74%
Dom. Rel.	139	18.29%
Adoption	11	1.45%
Sanity	9	1.18%
Juvenile	56	7.37%
Probate	57	7.75%
<b>TOTAL</b>	<b>760</b>	

#### TWENTIETH JUDICIAL DISTRICT

#### 20TH JUDICIAL DISTRICT

1991

#### COUNTIES IN THE DISTRICT:

Lake and Sanders

NO. OF JUDGES: One

1990 POPULATION: 29,629

AREA IN SQUARE MILES: 4,272

DENSITY PER SQUARE MILE: 6.94

#### DISTRICT JUDGE:

The Honorable C. B. McNeil

#### CLERKS OF THE DISTRICT COURT:

Lake Co.	Katherine E. Pedersen
Sanders Co.	Lisa Ferkovich

The Twentieth Judicial District consists of Lake and Sanders Counties and includes the Bob Marshall Wilderness, the Mission Mountain Wilderness, Flathead Lake and the Flathead Indian Reservation. This is the only state judicial district that has jurisdiction over felonies committed on an Indian reservation. All other reservations in Montana are exclusively within Federal Court jurisdiction.

The office of Presiding Judge C.B. McNeil is ably run by administrative Assistant Verna Shannon, and the conversion to the computer age is still in its infancy. The District Youth Court operates efficiently under the watchful eye of its Chief Juvenile Probation Officer Barbara Monaco, and the District has an active volunteer guardian ad litem program utilized in all dependent and neglect cases.

The Twentieth Judicial District continues to be one of the busiest in the state. During the first six-year term of existence of this District, there was an average of 1054 cases filed per year and an average of 1109 cases disposed of per year. Those figures include an average of 13 criminal jury trials per year and an average of 123 civil cases per year disposed of by judgment.

The civil and criminal calendars are both current, and as the calendar year 1992 commences, there are no cases pending decision by the judge which were at issue and submitted in 1991 or earlier.

Although the workload is heavy and the compensation is not commensurate with the responsibility, living on Flathead Lake does have its advantages and, after all, somebody has to do it.

Cases filed in the 20th Judicial District in 1991:

Criminal	187	17.43%
Civil	398	37.09%
Dom. Rel.	245	22.83%
Adoption	19	1.77%
Sanity	1	0.09%
Juvenile	95	8.85%
Probate	128	11.93%

**TOTAL** 1,073

## MONTANA DISTRICT JUDGES

District Judges serving in 1991 are:

**G. TODD BAUGH** - District Judge, 13th Judicial District. Born October 12, 1941 in Sweetwater, Texas, and came to Montana in 1967. Received B.A. in Economics and Business from Rice University and LL.B from the University of Texas. Engaged in the general practice of law. Elected to the bench in 1984. Wife's name is Linda and they are the parents of one son and one daughter.

**MAURICE R. COLBERG** - District Judge, 13th Judicial District. Born December 26, 1934 in Minneapolis, Minnesota, and came to Montana in 1940. Served in the U. S. Army 1957-1958 and in the Army Reserve 1959-1965. Received a BS in Business Administration from the University of Montana in 1957, an LL.B from the University of Montana in 1960 and was awarded a J.D. degree from the University of Montana in 1970. Engaged in the general practice of law with emphasis on commercial litigation and served as a Trustee for Billings School District No. 2 1979-1985. Appointed to the bench November 10, 1989. His wife's name is Patricia and they are the parents of two sons and one daughter.

**DALE COX** - District Judge, 7th Judicial District. Born March 23, 1927 in Great Falls, Montana. Served in the U. S. Navy. Attended University of Montana, Washington University at St. Louis and received B.A. from St. Louis University and LL.B and J. D. from the University of Montana. Engaged in the general practice of Law and served as County Attorney for Dawson County. Appointed to the bench June, 1987. His wife's name is Jackline and they are the parents to two sons.

**FRANK M. DAVIS** - District Judge, 5th Judicial District. Born November 2, 1921 in Unicoi, Tennessee, and came to Montana in 1952. Attended East Tennessee State and received LL.B from the University of Tennessee. Served in the United States Air Force. Appointed to the bench May, 1970. Elected 1982 and 1988. His wife's name is Joan and they are the parents of three sons and two daughters.

**LEIF B. ERICKSON** - District Judge, 11th Judicial District. Born June 10, 1942 in Helena, Montana. Received J.D. from the University of Montana. Engaged in the general practice of law. Appointed to the bench in 1985, elected in 1988. Wife's name is Carole and they are the parents of one son and one daughter.

**RUSSELL K. FILLNER** - District Judge, 13th Judicial District. Born April 18, 1926 in Forsyth, Montana. Served in the U. S. Army. Received LL.B and Ph.D from the University of Montana. Served as County Attorney for Rosebud County 1953-1965, City Attorney, Forsyth, Montana 1953-1965, City Councilman, City of Billings. Engaged in the general practice of law. Appointed to the bench December, 1986, elected 1988. Wife's name is Jane and they are the parents of four sons and one daughter.

**JACK L. GREEN** - District Judge, 4th Judicial District. Born May 18, 1922 in Kalispell, Montana. Served in the U. S. Army. Received a B.A. LL.B and J.D. from the University of Montana. Engaged in the general practice of law and served as a member of the City Council in Missoula, Montana. Appointed to the bench May, 1963, and has served continually since his appointment. His wife's name is Pat and they are the parents of one son and two daughters.

**DOUGLAS G. HARKIN** - District Judge, 4th Judicial District. Born May 21, 1943 in Sidney, Montana. Served in the U. S. Marine Corps. Received a B.S. in Accounting and J.D. from the University of Montana. Engaged in the general practice of law and was County Attorney for Ravalli County. Elected to the bench in 1980 and 1986. Father of two sons and one daughter.

**JOE L. HEGEL** - District Judge, 16th Judicial District. Born April 10, 1951 in Forsyth, Montana. Served in the U.S. Army Reserve 1969-1972. Received a B.A. in Government from St. John's University in 1973, J.D. from the University of Montana in 1977, and LL.M in Taxation from Boston University in 1978. Engaged in the general practice of law with emphasis on criminal, domestic relations and firm finance. He was elected to the bench in November 1988. His wife's name is Marielaine and they are the parents of one son and two daughters.

**JOHN S. HENSON** - District Judge, 4th Judicial District. Born September 29, 1940 in Wadsworth, Ohio. Came to Montana in 1971. Received a B.S. from Arizona State University and J.D. from the University of Kentucky. Engaged in the general practice of law and natural resource law. Served as County Attorney for Mineral County. Appointed to the bench May, 1979, and has served continually since his appointment. Father of one son and one daughter.

**R. W. HOLMSTROM** - District Judge, 13th Judicial District. Born March 29, 1928 in Garden City, Kansas, and moved to Montana in 1946. Served in the U.S. Navy 1945-46. Received a B.A. from the University of Montana in 1950 and a LL.B from the University of Montana in 1952. Engaged in the general practice of law with emphasis on litigation. Appointed to the bench March 16, 1984. His wife's name is Patricia and they are the parents of one son and one daughter.

**THOMAS C. HONZEL** - District Judge, 1st Judicial District. Born March 1, 1945 in Spokane, Washington. Came to Montana in 1946; Served in the US Army; received a B.A. in English from Carroll College and J.D. from the University of Montana School of Law. Was engaged in the general practice of law and served as Deputy County Attorney for Lewis and Clark County. Elected to the bench November 1984. Wife's name is Mary and they are the parents of three sons.

**MICHAEL H. KEEDY** - District Judge, 11th Judicial District. Born April 7, 1943 in Falls City, Nebraska. Came to Montana in 1974. Attended the University of Nebraska, received a B.A. in Political Science from Earlham College and J. D. from Washington University School of Law. Served in the Montana House of Representatives 1979-1981. Elected to the bench in 1982 and 1988. Wife's name is Carol and they are the parents of one son and one daughter.



**ROBERT S. KELLER** - District Judge, 19th Judicial District. Born December 5, 1927 at Bellefonte, Pennsylvania. Served in U. S. Army. Received B.A. from Penn State University and LL.B and J.D. from the University of Utah. Engaged in the general practice of law. Elected District Judge, 11th Judicial District 1968 and served until May 1976. Appointed District Judge of the 19th Judicial District April 1988. Wife's name is Susan and they are the parents of two sons and two daughters.

**LEONARD H. LANGEN** - District Judge, 17th Judicial District. Born September 12, 1914 at Glasgow, Montana. Received BA in Economics and Sociology and LL.B and J.D. from Montana State University. Special Agent for FBI serving in Detroit, Indianapolis, New York City and Butte. Engaged in general practice of law at Glasgow in trial practice. President, Montana Judges Association, 1990. Elected to the bench in 1976, 1982 and 1988. Wife's name Kathryn and they are the parents of three sons and one daughter.

**DOROTHY McCARTER** - District Judge, 1st Judicial District. Born February 5, 1947 in Watertown, New York, and came to Montana in 1977. Received a B.S. in Elementary Education from the University of Colorado and J.D. from the New England School of Law. Served as law clerk in the 1st Judicial District and as Assistant Attorney General. Appointed to the bench October 5, 1989 and is the first woman to serve as District Judge in the 1st Judicial District and the second woman to serve as District Judge in the State. Married to Mike McCarter and they are the parents of two sons.

**JOHN M. McCARVEL** - District Judge, 8th Judicial District. Born June 6, 1921 in Anaconda, Montana. Served in the U. S. Navy. Received B.A. from Carroll College, attended the University of Notre Dame and received a J.D. from the University of Michigan. Engaged in the general practice of law and served as County Attorney for Deer Lodge County. President of

the Montana Judges Association 1986. Appointed to the bench January, 1979 and has served continually since his appointment. Wife's name is Corintha and they are the parents of five sons.

**THOMAS McKITTRICK** - District Judge, 8th Judicial District. Born January 7, 1944 in Anaconda, Montana. Received a B.A. in Political Science from Carroll College in 1966 and studied law at Gonzaga University School of Law. Engaged in the general practice of law and served as Deputy County Attorney for Cascade County. Appointed to the bench in December, 1983. His wife's name is Lisa and they are the parents of one son and one daughter.

**ED McLEAN** - District Judge, 4th Judicial District. Born April 12, 1946 in Anaconda, Montana. Attended the University of Washington, received B.S. in Business and J.D. from the University of Montana. Chief Criminal Deputy for the Missoula County Attorney's Office. Appointed to the bench February 1989. Wife's name is Sandy and they are the parents of two sons and one daughter.

**C. B. McNEIL** - District Judge, 20th Judicial District. Born February 17, 1937 in Anaconda, Montana. Served as a pilot in the U. S. Army. Attended Montana School of Mines and received B. S. in Metallurgical Engineering, University of Alaska, J. D. University of Montana. Engaged in the general practice of law in Polson. Delegate, 1972 Montana Constitutional Convention. Elected to the bench 1984. His wife's name is JoAnn and they are the parents of one son and one daughter

**RONALD D. McPHILLIPS** - District Judge, 9th Judicial District. Born March 14, 1932 in Great Falls, Montana. Served in the U. S. Army 1952-1954. Received a B.S. in Business Administration, Banking and Finance from University of Montana in 1956. Attended Valpariso University Law School and received a J.D. degree from the University of Montana in

1960. Engaged in the general practice of law and was elected Toole County Attorney in 1960. Has served as District Judge since 1963. His wife's name is Bernice and they are the parents of three daughters.

**TED L. MIZNER** - District Judge, 3rd Judicial District. Born October 21, 1948 in Deer Lodge, Montana. Received B.S. in Business Administration-Accounting and J.D. from the University of Montana. Engaged in the general practice of law and served as County Attorney for Powell County. Appointed to the bench June, 1987. His wife's name is Gayle and they have three sons and one daughter.

**LARRY MORAN** - District Judge, 18th Judicial District. Born November 4, 1932. Engaged in the general practice of law. Received his law degree from the University of Colorado and was admitted to the practice of law in Montana in 1973. Appointed to the bench in September, 1989. Wife's name is Mona and they are the parents to two sons.

**THOMAS OLSON** - District Judge, 18th Judicial District. Born May 30, 1938 in Glendive, Montana. Graduated from Montana State College in General Studies in 1960, and from the University of Montana Law School in 1963. He served as a Law Clerk for Chief Justice James T. Harrison. He was assigned as Legal Officer in the U. S. Marine Corps, attaining the rank of Captain. In 1967 he entered the private practice of law in Bozeman, and was twice elected Gallatin County Attorney. From 1975 to 1977, Olson served as United States Attorney for Montana. He was elected District Judge in 1982 and 1988. Wife's name is Ann and they are the parents of two sons and one daughter.

**RICHARD G. PHILLIPS** - District Judge, 7th Judicial District. Born May 20, 1949 in Jersey City, New Jersey. Received a B.A. degree from St. Benedict's College in Atchison, Kansas in 1971

and J.D. from the University of Montana in 1976. Engaged in the general practice of law and served as City Attorney for the City of Sidney. Also served as Deputy County Attorney for Richland County prior to being elected to the bench in 1990. Wife's name is Jeannette and they are the parents of two sons and one daughter.

**PETER L. RAPKOCH** - District Judge, 10th Judicial District. Born September 15, 1925 in El Paso, Texas. Served in the U. S. Army 1944-46 and in the Reserves 1949-68. Received a B.S. degree in Political Science from Santa Clara University in 1953 and a LL.B from the University of Montana in 1957. Engaged in the general practice of law and served as Fergus County Attorney prior to being elected to the bench in 1982. Wife's name is Patricia and they are the parents of five sons and three daughters.

**BYRON L. ROBB** - District Judge, 6th Judicial District. Born May 22, 1930 in Livingston, MT. Served in the US Army. Received B.S. in Business Administration and LL.B from the University of Montana. Engaged in the general practice of law and served as County Attorney for Park County. Elected to the bench in 1982 and 1988. Wife's name is Jeannette and they are the parents of two sons and two daughters.

**ROY C. RODEGHIERO** - District Judge, 14th Judicial District. Born March 28, 1936 in Roundup, Montana. Received B.A. in Business Administration and J.D. from Montana State University. Engaged in the general practice of law and served as County Attorney for Musselshell County. Elected to the bench in 1982 and 1988. Wife's name is Janet and they are the parents of two sons and four daughters.

**JOEL G. ROTH** - District Judge, 8th Judicial District. Born June 6, 1929 in Billings, Montana. Served in the U. S. Army. Attended the University of Nebraska and received B. A. in Business Administration and LL.B from the University of Montana. Engaged in the general

practice of law, served as Deputy County Attorney for Cascade County, and with the United States Securities and Exchange Commission. Elected to the Office of Justice of the Peace in Cascade County. President of the Montana Judges Association, 1989. Elected to the bench 1976, 1982 and 1988. Widower and the father of one son.

**JEFFREY SHERLOCK** - District Judge, 1st Judicial District. Born April 3, 1950 in Great Falls, Montana. Received a B.A. and J.D. from the University of Montana. Served as City Attorney for the City of Helena and was engaged in the general practice of law. Elected to the bench November, 1988. Wife's name is Melissa and they have one daughter.

**M. JAMES SORTE** - District Judge, 15th Judicial District. Born February 22, 1931 in Plentywood, Montana. Served in the U. S. Air Force. Received B. A. in Political Science and History and LL.B from the University of Montana. Engaged in the general practice of law and served as Assistant County Attorney and Assistant Attorney General. President of the Montana Judges Association, 1981. Appointed to the bench August 1969, and has served continuously since then. His wife's name is Anne and they are the parents of one daughter.

**WILLIAM J. SPEARE** - District Judge, 13th Judicial District. Born February 14, 1929 in Sioux City, Iowa, came to Montana two months later. Served in the U. S. Air Force. Attended Montana State University and received LL.B from the University of Montana. Engaged in the general practice of law. Served as County Attorney for Yellowstone County 1959-1965 and in the Montana House of Representatives 1969-1971. Appointed to the bench in October, 1979, reelected in 1982 and 1988. His wife's name is Shirley and they are the parents of one son and two daughters.

**MARK P. SULLIVAN** - District Judge, 2nd Judicial District. Born February 24, 1928 in Great Falls, Montana. Received a B.A. in Business Administration from the University of Montana and J.D. from Georgetown University. Served in the U. S. Marine Corps. Engaged in the general practice of law and served as County Attorney for Silver Bow County. Appointed to the bench in October 1980 and was reelected in 1982, 1988. He is the father of two sons and two daughters.

**JOHN WARNER** - District Judge, 12th Judicial District. Born January 22, 1943 in Great Falls, Montana. Attended the College of Great Falls, received a B.A. in History and Political Science and an LL.B from the University of Montana. District Delegate, Montana Officials Association; Past President, 12th Judicial Bar Association; Past President, State Bar of Montana. Elected to the bench 1988. His wife's name is Katherine and they are the parents of 3 sons and 3 daughters.

**KENNETH R. WILSON** - District Judge, 16th Judicial District. Born August 6, 1933 in Townsend, Massachusetts and came to Montana in 1959. Served in the U. S. Air Force. Received B.A. in History from Clark University and an LL.B from Montana State University. Engaged in the general practice of law and served as Deputy County Attorney for Custer County and City Attorney for the City of Miles City. Elected to the bench in 1988. His wife's name is Joan and they are the parents of two sons and two daughters.

## MONTANA JUDGE'S ASSOCIATION

The Montana Judge's Association was established to promote and foster the Court system and the laws of the State of Montana; to promote and foster the continued education of judges; and to provide a forum for the exchange of ideas and information useful to judges. Membership of the Association consists of currently serving Supreme Court and District Court Judges. Retired Supreme Court and District Court Judges are included as associate members. The association meets twice each year. Members receive CLE credits for seminars presented at the meetings.

Officers of the Montana Judge's Association for the term October, 1991 - October, 1992 are:

President	William J. Speare 13th Judicial District
Vice-President	Robert Holmstrom 13th Judicial District
Secretary/Treasurer	Mark P. Sullivan 2nd Judicial District

## CLERKS OF THE DISTRICT COURT

Clerks of the District Court maintain complete records of cases filed and proceedings conducted in the District Court within the county they represent. Minutes of daily court proceedings are maintained by the Clerk, who also keeps records of such matters as court orders and decrees, and a ledger of criminal cases. In addition, the Clerk issues marriage licenses and has administrative responsibilities in terms of jury selection.

Most of the Clerks of the District Courts are partisan elected county positions and serve a four year term. If a vacancy occurs in the Office of the Clerk of the District Court, the vacancy is filled by appointment of the Board of County Commissioners.

## MONTANA ASSOCIATION OF CLERKS OF THE DISTRICT COURT

The Montana Association of Clerks of District Court convened in Lewistown, Montana, on May 14-15, 1965, for an organizational meeting. The Association held its 25th anniversary meeting in June, 1990.

Eight districts have been formed throughout the State of Montana to enable clerks to meet twice a year to discuss mutual problems and ideals. The Association itself meets annually, usually in the county of the president, for their annual convention. By inviting guest speakers, holding workshops, and through discussions, the clerks have worked to standardize procedures and to become informed with new laws and techniques.

In 1973, a committee compiled the first handbook for Clerks of Court. The handbook is constantly being updated and through revisions is kept current. In 1976, the Clerks of Court began to actively work with the Court Administrator's Office. At that time a method of reporting and filing data to the Supreme Court was formulated and has continued to date.

The various committees of the association meet through the year to update the handbook, work on legislation as it pertains to our office, puts together training sessions and has worked with and through the Court Administrator to put on schools for the clerks of court.

In the fall of 1989, a new program for certifying Clerks of Court was started. Over a three year period, a Clerk of the District Court gained credits toward becoming certified by attending the annual school, participation in conventions and in workshops. Clerks were certified in Bozeman in June of 1991. Deputies also received a Certificate of Completion.

It is the desire of the Montana Association of Clerks of District Court to help one another to

share knowledge and information, to constantly improve and to be better Clerks of Court in order to perform our jobs in a professional manner and to better serve the public.

Officers of the Montana Association of Clerks of District Court for 1991 are:

President	Charmaine R. Fisher Yellowstone County
1st Vice President	John Poundstone Beaverhead County
2nd Vice President	ArLynn Archer Powder River County
Secretary	Greta Ross Fergus County
Treasurer	Patty Jo Henthorn Sweet Grass County

## STATEWIDE JUDICIAL INFORMATION SYSTEMS

The Statewide Judicial Information System (SJIS) is a computerized district court case history tracking system. The SJIS was implemented in July 1976 and was the result of both legislative and judicial desires to have timely and accurate statistical information on district court operations.

1991 will be the last yearly report for the Statewide Judicial Information Reporting System. Budget cuts from the 1992 Special Session forced the Office of Court Administrator to shutdown the system and revert to a monthly form from which information can be compiled and reported.

District Court cases filed, statewide in 1991:

Criminal	4,048	13.42%
Civil	12,798	42.44%
Dom. Rel.	6,967	23.10%
Adoption	729	2.42%
Sanity	568	1.88%
Juvenile	1,724	5.72%
Probate	3,321	11.02%
<b>TOTAL</b>	<b>30,155</b>	



Left to right: ArLynn Archer, Second Vice-President, Patty Jo Henthorn, Treasurer, Charmaine D. Fisher, President, John Poundstone, First Vice-President and Greta Ross, Secretary

## DISTRICT COURT CRIMINAL REIMBURSEMENT PROGRAM AND GRANT-IN-AID PROGRAM

The Program, enacted by SB 25 and SB 142 during the regular session of the 1985 Legislature, created an expanded state assumption of certain expenses associated with criminal proceedings in Montana's District Courts.

The District Court Criminal Reimbursement Program reimburses counties for certain adult criminal expenses. The Program, as outlined by Section 3-5-901, MCA, covers the eligible expenses in the following five categories:

- \* a percentage of Court Reporters' salaries
- \* the cost of transcripts of eligible criminal proceedings
- \* psychiatric examinations in criminal proceedings
- \* witness and jury expenses of criminal proceedings
- \* indigent defense expenses of criminal proceedings

The Program receives its revenue from a portion of the motor vehicle license tax. In Fiscal Year 1991 the total revenue collected was \$2,737,142. Reimbursement to counties for eligible criminal costs were \$2,526,927.

If, after all county reimbursements are made, there is a balance remaining then the balance must be awarded to counties in the form of a grant. The grant is based on whether the county has expended funds over and above their maximum mill levy set by law for district court expenses. In Fiscal Year 1991, grants in the amount of \$134,302 were awarded to 17 counties.

## COURTS OF LIMITED JURISDICTION

## JUSTICE COURTS

Justice of the Peace Courts are Montana's major Courts of Limited Jurisdiction. Their original jurisdiction presently includes most civil cases where a recovery will not exceed \$5,000; all misdemeanors punishable by a fine not exceeding \$500 or imprisonment not exceeding six months, including all traffic cases; or concurrent jurisdiction with the District Courts of all misdemeanors punishable by a fine exceeding \$500 or imprisonment exceeding 6 months or both such fine and imprisonment. These Courts also exercise concurrent jurisdiction with the District Court in actions of forcible entry, unlawful detainer, and residential landlord-tenant disputes. They do not have jurisdiction over felonies except for initial appearances and preliminary hearings.

By law, there must be at least one Justice of the Peace Court in each of Montana's 56 counties, which must be located at the County Seat. A Justice of the Peace may be appointed by a City or Town Council to serve as City Judge. At present there are 78 Justices of the Peace (32 also serve as City Judge), and 46 City Judges.

Justices of the Peace are elected on a nonpartisan ballot for a four year term. Requirements for the Office of Justice of the Peace include United States citizenship and residency in the County where the Court is held for one year. Each elected or appointed Justice of the Peace is required to attend two annual training sessions supervised by the Supreme Court. Failure to attend the training sessions disqualifies the Justice of the Peace from office and creates a vacancy in that office. Since 1985 Justices of the Peace are also required to obtain a Certificate of Completion for a course of education and training prescribed by the Commission on Courts of Limited Jurisdiction. When a vacancy occurs in the office of Justice of the Peace, a successor is appointed by the Board of County Commissioners.

## CITY COURTS

Montana statute allows the creation of City Courts. These courts have concurrent jurisdiction with Justice Courts for all misdemeanors punishable by a fine not exceeding \$5,000 nor exceeding six months imprisonment. City Courts exercise exclusive jurisdiction over municipal ordinances. In a town or third class city, the governing body may designate a Justice Court of the County to act as City Court.

A City Judge is elected on a nonpartisan ballot to a four year term and must have the same qualifications as those required of a Justice of the Peace. Like Justices of the Peace and Municipal Judges, City Judges are required to attend two annual training sessions supervised by the Supreme Court. Failure to attend the training sessions disqualifies the Judge and creates a vacancy in the office. City Judges are also required to obtain a Certificate of Completion for a course of education and training prescribed by the Commission on Courts of Limited Jurisdiction. When a vacancy occurs in the office of City Judge the position is filled by the governing body of the City or Town.

## MUNICIPAL COURT

Montana statute allows for the creation of a Municipal Court for those cities that have a population of 10,000 or more. A Municipal Court may be established by City ordinance passed by a two-thirds vote of the governing body. In cities where a Municipal Court is established the office of City Judge is abolished. Presently there is only one Municipal Court in operation in the State of Montana. The Court is in Missoula.

While a Municipal Court Judge must have the same qualifications as a District Court Judge, he has the same jurisdiction as a Justice of the Peace. A Municipal Court Judge is elected for a four year term on a nonpartisan ballot. Training requirements for a Municipal Judge are identical

to those for City Judges and Justices of the Peace. A vacancy in the Office of Municipal Judge is filled by appointment by the governing body of the City.

In Fiscal Year 1991, the Courts of Limited Jurisdiction collected nearly \$9,000,000 in revenues.

## SPECIAL JURISDICTION COURTS

### WATER COURTS

Montana's Water Courts were created by the 1979 Legislative Session in response to concerns that the existing program of water adjudication, which was set up under the 1973 Water Use Act, would take one hundred years to complete. The Legislature created the Water Court to "expedite and facilitate" the adjudication of existing water rights - those rights that were in existence prior to 1973. The Water Court has exclusive jurisdiction to interpret and determine existing water rights.

There are four water divisions in the State that are formed by the natural divides between drainage and the border of the State. The four major water divisions in Montana are the Yellowstone River Basin, the Lower Missouri River Basin, and the Upper Missouri River Basin and the Clark Fork River Basin.

The Chief Water Judge is appointed by the Chief Justice of the Supreme Court from a list of nominees submitted by the Judicial Nominations Commission, and serves a four year term. Water Judges are designated for each water division by a majority vote of a committee composed of the District Judge from each single judge judicial district, and the Chief District Judge from each multiple judge judicial district. The Water Judges and their divisions are:

C. Bruce Loble  
Chief Water Judge

Judge Ted L. Mizner  
Clark Fork Division

Judge Bernard W. Thomas  
Lower Missouri Division

Judge Roy C. Rodeghiero  
Yellowstone Division

Vacant  
Upper Missouri Division

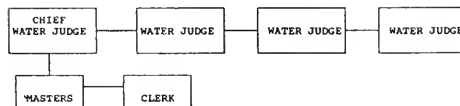
Five Water Masters and four Clerks are employed by the Water Courts. The Water Judges and Masters conduct hearings and make decisions concerning any objections made to a temporary preliminary or preliminary decree of water rights. The Clerk of the Water Court and her deputies function in a manner similar to the Clerk of the District Court.

Funding for Water Courts is derived from various special revenue sources which include coal tax money, resource indemnity trust money and various other sources of bond and income revenues.

The work of the Water Courts was slowed by litigation concerning the Court's role in its adjudication of the State's pre-1973 water. However, out of the 85 basins within the State of Montana, 6 basins have final decrees, 6 basins have preliminary decrees and 33 basins have temporary preliminary decrees. The State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation entered into a Compact in 1985 and the State of Montana and the Northern Cheyenne Tribe of the Northern Cheyenne Reservation entered into a Compact in 1991. These Compacts quantified the reserved water rights of the tribes and were approved by the Montana Legislature. The 1989 Legislature

required the Water Court to reopen and review all preliminary or final decrees that were issued before April 21, 1981. This statute will require all 6 preliminary and all 6 final decrees to be reopened and reviewed. Including the Powder River Basin the total number of claims decreed is 95,972 out of a total of 215,421 in the entire state leaving 119,449 claims yet to be adjudicated. The Musselshell River Below Roundup Basin Temporary Preliminary Decree was issued in February 1990 and the Ruby River Basin Temporary Preliminary Decree was issued in November 1990. The North-end Subbasin of the Bitterroot River Temporary Preliminary Decree is scheduled for issuance during the summer of 1992. The Court is continuing to hearing cases in the basins that have already been decreed.

ADMINISTRATIVE CHART



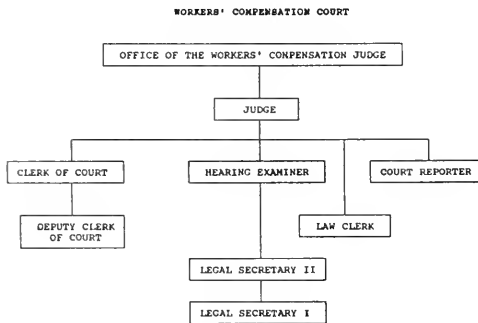
## WORKERS' COMPENSATION COURT

The 44th Legislative Assembly created the Office of the Workers' Compensation Court on July 1, 1975 to adjudicate disputes arising out of the workers' compensation benefit program. The Workers' Compensation Court has exclusive jurisdiction to make determinations concerning disputes arising under Title 39.

To accomplish legislative intent, the Office of the Workers' Compensation Judge is organized and functions in much the same manner as a district court, except that it is not bound by common law nor statutory rules of evidence and follows the appropriate provisions of the Montana Administrative Procedures Act. Legislative changes in 1987 provide that Rules of Evidence do apply in cases where the injury occurred after July 1, 1987.



The Workers' Compensation Judge is appointed by the Governor from a list of nominees submitted by the Judicial Nomination Commission, and serves a six year term. The Workers' Compensation Judge must have the same qualifications necessary to hold the office of District Court Judge. Effective January 1, 1990 the Office of the Workers' Compensation Judge was assigned to the Department of Labor and Industry for administrative purposes only.



## ADMINISTRATION OF THE JUDICIAL SYSTEM

The Constitution of the State of Montana charges the Supreme Court with the ultimate responsibility for the efficient and effective operation of the judicial system. The Constitution gives the Supreme Court "general supervisory control over all other courts" and allows the Supreme Court to make rules governing appellate procedure, practice and procedure for all other courts and to regulate admission to the bar and conduct of attorneys.

To assist the Court in fulfilling its administrative and supervisory duties, the Supreme Court relies on presiding District Court Judges, the Office of Court Administrator, the Clerk of the Supreme Court, and various boards and commissions. The activities of these offices and boards and commissions during calendar year 1991 are highlighted below.

## **OFFICE OF THE COURT ADMINISTRATOR**

In October 1975, The Supreme Court established the Office of Court Administrator to assist the Court with its administrative duties. The Legislature made the office statutory in 1977 (3-1-701). The Court Administrator is appointed by the Supreme Court and holds the position at the pleasure of the Court.

The Office of the Court Administrator assists the Supreme Court in preparing and presenting judicial budget proposals to the Legislature, monitoring and managing the judicial budget, coordinating judicial education services, and providing central staff services to the court, various boards and commissions, and to District Courts and the Water Court.

The Office of the Court Administrator is also assisting District and Limited Jurisdiction Courts with automation projects. In 1991 the Office administered a program of grants to 26 courts that provided hardware and software for various elements of court business. This grant program was funded in large part by the 1991 Legislature.

On July 1, 1991, the District Court Criminal Reimbursement and Grant in Aid Program was transferred from the Department of Commerce to the Office of the Court Administrator. This will enable the Court Administrator's Office to monitor district court criminal costs and to track the total court costs of each county.

The Court Administrator's Office also coordinated in 1991 a Five-State Judicial Conference in Helena. The July Conference included participants from the Supreme and District Courts of the states of Idaho, Montana, North and South Dakota, and Wyoming. The program for the Conference examined legal issues related to questions of bio-ethics and explored ways in which the Judicial and Legislative branches of government can appropriately communicate better.

## CLERK OF THE SUPREME COURT

The Clerk of the Supreme Court assists the Court, the legal community and the public in processing appeals and original proceedings from the early filing stages through final disposition. The Clerk is elected to a six year term on a partisan ballot in a statewide election. The current Clerk of the Supreme Court is Ed Smith of Helena.

The primary responsibilities of the Office of the Clerk are specified in the Montana statutes, and consist of processing all documents relative to Supreme Court appeals and petitions for the various writs, including writs of supervisory control, habeas corpus and mandamus, which are filed with the Court. The office also provides the Court a weekly status report of pending cases.

The Clerk has additional duties as well, including the preparation of minutes of all oral arguments, collecting the annual attorney license tax for more than 2,900 attorneys. Certificates of Good Standing and Certificates of Admission are issued by the Clerk, who also has an integral role in the bar admission process. The Clerk manages a staff of three individuals, consisting of one deputy clerk and two assistant clerks.

The Office of the Clerk utilizes an automated docketing program using personal computers with a unique word processing program. The system is user oriented, and provides the Court, Judicial personnel and the public with the ability to track cases through the appeals process. A new automated system for processing attorney license taxes and maintaining a roll of current attorneys has been developed by the Clerk's Office. This system allows interested parties to quickly review an attorney's standing.

The Clerk's Office docketed 636 cases during calendar year 1991. This number comprised a total of 388 civil appeals, 90 criminal appeals, and 158 original proceedings.

During fiscal year 1991, the office collected \$158,306.55 in fees and taxes. This amount was comprised of \$36,527.55 in Court fees, bar examination fees of \$52,169, and \$69,610 in attorney license taxes.

In 1991, the Clerk's Office undertook an effort in conjunction with its charge to store and preserve Supreme Court records. The Legislature authorized the Clerk to work with the Secretary of State to develop a records management policy. The office will utilize available technologies to develop a record of each Supreme Court case filed since 1938 (cases prior to 1938 have been placed on microfilm). This effort will ensure public access to Supreme Court actions.

## STATE LAW LIBRARY

1991 began with hope and promise for the State Law Library, as the 52nd Legislature approved funding for current programs, book inflation, and to allow cleaning of the book collection. All public services statistics continued to grow, including in-person users of the Library, book and film circulation, photocopy requests, and reference assistance. Our reference book, *A Guide to Montana Legal Research*, was produced and distributed throughout the state.

The size of the collection is now 110,000 volumes, although relatively few new titles have been added in the past year. Our technical services staff were able to provide library users around the state with dial-up access to our CD-ROM book catalog without requiring additional funding. Requests for our materials from other libraries throughout Montana has grown dramatically.

In the spring of 1991 the Law Library formed a business-school partnership with Helena High School, the first state agency in Montana to participate in this unique cooperative venture. The Library's participation to date has included hosting students from business law classes for

discussions on legal process and procedure, visits to the advanced government classes, and assistance given to teachers with class projects and possible research assignments.

The Director of the Law Library was elected Chair of the State, Court and County Law Libraries Section of the American Association of Law Libraries. As leader of this 750 member division, the Law Librarian is in a position to influence better relationships between law libraries, bar associations, and courts throughout North America.

The year ended on a very grim note, as preparation began for a Special Session which resulted in loss of significant funding. The Law Library has been caught in a vise of rising costs and dwindling budgets for over five years, and now is making such drastic cuts that its collection may be irreversibly damaged. As the only lending, public law library in the State, the Law Library's new budget cuts will result in future erosion of all Montana citizens' access to legal information.

#### **ADVISORY BOARDS AND COMMISSIONS OF THE SUPREME COURT OF MONTANA**

The Supreme Court utilizes the services of several boards and commissions in order to discharge its general administrative and supervisory responsibilities delegated by the Constitution. The various boards and commissions are charged by the Court to address specific issues or areas of expertise and to report problems and recommendations to the Supreme Court.

The activities of the advisory boards and commissions during the 1990-91 biennium are summarized below.

#### **JUDICIAL NOMINATION COMMISSION**

The Judicial Nomination Commission, created under 3-1-1001, MCA, is charged with the responsibility of providing the Governor with a list of candidates for appointment to fill any vacancy on the Supreme Court, District Court, or Workers Compensation Court, and to provide the Chief Justice of the Supreme Court with a list of candidates for appointment to fill any term or vacancy for the Chief Water Judge. The Commission is composed of seven members: four lay members from different geographical areas of the state who are appointed by the Governor; two attorneys, one from each congressional district, appointed by the Supreme Court; and one District Judge who is elected by District Judges from around the state. Commission members serve a four year term and are not eligible for nomination to a judicial office during their term on the Commission or for one year thereafter.

When a vacancy occurs on the Supreme Court or in a District Court, the Commission is required to meet and within 30 days after the vacancy has been verified by the Chief Justice, and submit to the Governor a list of not less than three (nor more than five) nominees for appointment. The same process is true for a vacancy in the Office of Chief Water Judge, except that the nominees are made to the Chief Justice for eventual appointment. The Governor and Chief Justice are limited to making appointments from the list of nominees submitted by the Judicial Nominations Commission.

If the Governor fails to nominate within 30 days after receipt of a list of nominees, the Chief Justice (or acting Chief Justice) makes the nomination.

The Commission meets as necessary when a vacancy occurs or a term expires. The Commission met once in calendar year 1986, four times in calendar year 1987 and twice in calendar year 1988. In 1989 the Commission met a total

of six times, once to nominate to fill a vacancy on the Supreme Court (Gulbrandson/Barz) four times to nominate to fill vacancies on the District Court (Wheelis/McLean; Gary/Moran; Loble/McCarter and Barz/Colberg) and once to nominate for the position of Chief Water Judge. W.W. Lesley was appointed to a second term. In 1990 the Commission met twice, once to nominate to fill a vacancy as Chief Water Judge (Lessley/Loble) and once to nominate to fill a vacancy on the District Court (Olsen/Purcell). In calendar year 1991 the Nomination Commission met once to fill a Supreme Court vacancy (Barz/Gray).

### SENTENCE REVIEW BOARD

Anyone sentenced to a year or more in the Montana State Prison may request judicial review of the sentence. Applications for sentence review must be made within sixty days from the date the sentence was imposed.

The Sentence Review Division of the Supreme Court consist of three District Court Judges appointed by the Chief Justice for three-year terms. The Chief Justice designates one of the Judges as chairman.

The Sentence Review Board meets at least four times each year in the Administrative Building at the State Prison in Deer Lodge. (MCA, 46-18-901).

The workload of the Sentence Review Board has increased steadily in the past few years. One-hundred and one applications were filed with the Board in 1985, 128 in 1986, 140 in 1987, 159 applications in 1988, 148 in 1989, 162 in 1990, and 149 applications were received in 1991. (The 1990 application number is a corrected number.) There were 226 total active files along with 50 files on appeal in 1991.

### COMMISSION ON UNAUTHORIZED PRACTICE

The investigation of complaints alleging that a person is practicing law without having been admitted to the bar is the responsibility of the Commission on Unauthorized Practice. The Commission was created by the Supreme Court on June 30, 1976. Investigations of unauthorized practice originally had been the responsibility of the Commission on Practice.

The Commission on Unauthorized Practice is made up of five members appointed by the Supreme Court for two year terms. The Commission meets when necessary to investigate complaints of unauthorized practice of law.

### COMMISSION ON COURTS OF LIMITED JURISDICTION

Two years after the adoption of a of a new Constitution, the Supreme Court established the Commission on Courts of Limited Jurisdiction to assist in setting general policies for Limited Jurisdiction Courts. The Commission was charged with preparing a set of rules of practice and procedures designed to carry out the principles of the 1972 Constitution and to improve and make court practices uniform throughout the state. The Commission was also charged with studying the limited jurisdiction court system and making recommendation to the Supreme Court for improvements.

Originally, the Supreme Court appointed eight to the Commission for an indefinite term.

The Supreme Court re-established the Commission in August, 1976, with a new emphasis on continuing education for limited jurisdiction judges. Currently, the Commission holds ten meetings each year and conducts two annual training sessions for all elected and appointed Justices of the Peace and City Judges.

In calendar year 1986, Judges of the Courts of Limited Jurisdiction received 37.5 hours of training and in calendar year 1987, 33.75 hours of training was conducted. The Judges received 47.75 hours of training in calendar year 1988, and 42.75 hours of training was given in 1989. In calendar year 1990 Judges of the Courts of Limited Jurisdiction received 50.5 hours of training and in 1991 and 34.5 hours of training. All City Judges, Municipal Judges and Justices of the Peace are required to attend the two training sessions per year.

The current Commission consists of nine members appointed by the Supreme Court for four year terms. Membership on the Commission is represented by one district judge, one city representative, one county representative, one State Bar representative, one city judge representing a small community, one justice of the peace representing a small community, one justice of the peace representing a large community, one member at large, and the President of the Montana Magistrates Association.

## BOARD OF BAR EXAMINERS

The Board of Bar Examiners is responsible for conducting the licensing examination for attorneys who wish to practice law in the State of Montana. In 1991, there were 2,916 attorneys licensed to practice law in Montana.

The Board of Bar Examiners is appointed by the Supreme Court. Terms of the Board members are permanent, however, the Supreme Court may release, dismiss, or remove any member of the Board and appoint other members in his or her stead at any time. The Supreme Court Administrator serves as the Board's Administrator.

The Board of Bar Examiners conducts the examination of applications for admission to the bar. The Board performs such duties and renders such assistance in the examination of applicants as may be prescribed by the Supreme Court.

The Board offered a February and July examination in 1991. Beginning in 1992, the Board of Bar Examiners will administer only one exam per year.

Applicants are examined on their legal ability, and character and fitness to practice law. The Montana State Bar Examination consists of a one day Multistate Bar Examination and a one and one-half day Montana Essay Examination.

STATE BAR EXAMINATION 1983-1991			
DATE OF EXAM	NUMBER OF APPLICANTS	NUMBER SUCCESSFUL	PERCENT SUCCESSFUL
2-83	24	17	71
8-83	38	32	84
2-84	31	23	84
7-84	98	81	83
2-85	39	22	56
7-85	125	108	86
2-86	34	20	59
7-86	119	85	71
2-87	46	33	72
7-87	90	87	97
2-88	25	17	68
7-88	89	78	88
2-89	22	16	73
7-89	80	73	91
2-90*	25	19	76
7-90*	97	85	88
2-91	25	17	68
7-91	78	62	79

\*Corrected numbers from 1990 Judicial Report

## **COMMISSION CONCERNING RULES OF ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF MONTANA**

A Commission Concerning Rules of Admission to the Practice of Law in the State of Montana was created by Court Order of the Supreme Court on June 18, 1985. The Commission was instructed to study the Court's existing rules on admission to the practice of law and to make recommendations to the Supreme Court as the Commission deems appropriate.

Membership on the Commission is represented by two non-lawyers, one District Judge, one member of the Board of Bar Examiners, and seven members of the State Bar of Montana.

Members of the Commission are appointed by the Supreme Court for an indefinite term.

## **COMMISSION ON RULES OF EVIDENCE**

The Supreme Court established the Commission on Rules of Evidence by Order Number 12729 on April 5, 1974. The Commission on Rules of Evidence was instructed to study the present Code of Evidence and the practice thereunder, together with other developments and proposals in the field of evidentiary law and to make recommendations from time to time, for appropriate revision of the Code of Evidence.

The Commission on Rules of Evidence is made up of 13 members who are appointed by the Supreme Court for an indefinite term.

## **ADVISORY COMMISSION ON RULES OF CIVIL AND APPELLATE PROCEDURE**

The Advisory Commission on Rules of Civil and Appellate Procedure was established by Order of the Supreme Court on February 15, 1983. The

Commission is charged with analyzing changes in the Federal Rules of Civil Procedure to determine whether further modifications of the Montana Rules of Civil Procedure and the Montana Rules of Appellate Procedure should be adopted. Modifications are necessary from time to time in order to coordinate with federal rules and procedural changes. The goal is to keep current with developing changes and to promote speedy resolution of litigation.

The Advisory Commission meets periodically to review rules and make recommendations to the Supreme Court for necessary modifications.

The eleven member Commission is appointed by the Supreme Court for an indefinite term.

## **COMMISSION ON THE USE OF APPROPRIATE TECHNOLOGY IN THE MONTANA JUDICIARY**

The Supreme Court established an eleven member Commission on the Use of Appropriate Technology in the Montana Judiciary in December, 1987. The Commission was directed to review the current and future uses of appropriate technology within the Montana Judiciary. The Supreme Court's goal in establishing such a commission was to begin an assessment of automation needs for the Judiciary and develop a long-range plan for coordinated acquisition and use of computer equipment.

The Commission continued its work in 1991 and began the process of recommended computer standards for judicial offices to the Supreme Court. The Supreme Court has adopted six automation standards that are meant to begin the process of moving Montana's Judicial System in the direction of a uniform hardware/software system and providing unified training and support services that are realistic given Montana's resources, that are up-to-date and cost-effective,

and that can be shared statewide between Courts. Standards also provide written guidelines on issues related to information security and backup for essential court records. Copies of the Order on Court Automation Standards are available through the Office of the Court Administrator.

## **DISCIPLINARY BOARDS**

### **COMMISSION ON PRACTICE**

The Commission on Practice is responsible for examining complaints alleging unethical conduct by Montana attorneys.

The Supreme Court established the Commission by Order dated January 5, 1965. Besides receiving and investigating complaints of alleged misconduct, the Commission also has the responsibility for investigating and reporting on the merits of any petition for reinstatement to the practice of law.

The 1965 Order establishing the Commission on Practice called for the appointment of eight attorney members, one from each region established in the Order. The Supreme Court appointed members from a list of three nominees submitted from each area. On August 22, 1979, the Supreme Court enlarged the Commission from eight to eleven members. The three additional members are non-attorneys. They are appointed at large by the Supreme Court. All members of the Commission on Practice serve a four year term.

The Commission's caseload has increased significantly in the last few years. The Commission received 147 complaints in 1985, 165 complaints in 1986, 192 complaints in 1987, 194 complaints in 1988, 213 complaints in 1989, 227 complaints in 1990, and in 1991 the Commission received 265 complaints.

### **SUMMARY OF COMMISSION ON PRACTICE COMPLAINTS FOR THE YEAR 1991**

NUMBER OF COMPLAINTS FILED FOR CALENDAR YEAR 1991 .....	265
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NUMBER OF COMPLAINTS PENDING AT THE END OF 1990 .....	121
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TOTAL:	386
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#### **Disposition of Complaints:**

Dismissed by Commission	170
Written Private Reprimand by the Commission	43
Oral Private Reprimand by the Commission	3
Public Reprimand by the Supreme Court	1
Suspensions by the Supreme Court	2
Disciplinary Proceedings instituted and pending	38
Complaints pending as of 12/31/91	128

TOTAL:	386
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### **JUDICIAL STANDARDS COMMISSION**

Article VII, Section 11 of the Montana Constitution directs the Legislature to create a five member Judicial Standards Commission empowered to investigate complaints against any judge and to hold hearings concerning the discipline, removal, or retirement of any judge. The Commission is attached to the Supreme Court for administrative purposes only. The work, investigations, and recommendations of the Commission are entirely independent of the Supreme Court.

Whenever the Commission makes a recommendation to the Supreme Court concerning discipline or removal of a judicial officer, the Court may take appropriate action concerning the recommendation. The Supreme Court may censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by

the Supreme Court of the State of Montana, or habitual intemperance. In addition, the Supreme Court may retire any justice or judge for a permanent disability that seriously interferes with the performance of his or her duties.

The Judicial Standards Commission is a five-member body consisting of two district judges from different judicial districts who are elected by all the district judges; one attorney who has practiced law in the state for at least ten years, appointed by the Supreme Court; and two citizens from different congressional districts who are not attorneys or judges, active or retired. These two members are appointed by the Governor. Members of the Judicial Standards Commission serve a four year term.

The Commission meets quarterly to consider complaints. The Commission received 12 complaints in 1985, 11 complaints in 1986, 37 complaints in 1987, 35 complaints in 1988, 37 complaints in 1989, 30 complaints in 1990 and 34 complaints were received by the Commission in 1991.

SUMMARY OF COMMISSION ON PRACTICE  
COMPLAINTS FOR THE YEAR 1991

NUMBER OF COMPLAINTS FILED FOR CALENDAR YEAR 1991	265
NUMBER OF COMPLAINTS PENDING AT THE END OF 1990	121
<u>TOTAL:</u>	<u>386</u>

Disposition of Complaints:

Dismissed by Commission	170
Written Private Reprimand by the Commission	43
Oral Private Reprimand by the Commission	3
Public Reprimand by the Supreme Court	1
Suspensions by the Supreme Court	2
Disbarment by the Supreme Court	1
Disciplinary Proceedings instituted and pending	38
complaints pending as of 12/31/91	128
<u>TOTAL:</u>	<u>386</u>



## STATE BAR OF MONTANA

### HISTORY AND PURPOSE OF THE ASSOCIATION

The State Bar of Montana was created by order of the Montana Supreme Court in January, 1974. In its Order, the Court provided that all persons practicing law in the state were obliged to be members of the State Bar. Prior to that date, the State had a voluntary bar association -- the Montana Bar Association.

The purposes of the State Bar are to aid the courts in maintaining and improving the administration of justice; to foster, maintain and require on the part of attorneys, high standards of integrity, learning, competence, public service, and conduct; to safeguard proper professional interests of members of the bar; to encourage the formation and activities of local bar associations; to provide a forum for discussion of and effective action concerning subjects pertaining to the practice of law, the science of jurisprudence and law reform, and relations of the Bar to the public; to provide for the continuing legal education of members of the Bar and to insure that the responsibilities of the legal profession to the public are more effectively discharged.

### GOVERNANCE

The State Bar is governed by a 20-member Board of Trustees. Sixteen members of the Board are elected by the active members of the Bar to two-year terms from State Bar areas. State Bar areas are made up of one or several judicial districts. The other four Board members are the President and President-Elect, who are elected statewide to one-year terms, the Secretary-Treasurer, who is elected statewide to a two-year term, and the Immediate Past President.

### ACTIVITIES AND PROGRAMS

Major activities and programs of the State Bar include:

A program of Mandatory Continuing Legal Education, requiring active members of the state Bar to secure 15 hours of continuing legal education year year.

A Client Security Fund which makes restitution in cases where an attorney has improperly appropriated client funds. Twenty dollars of each active member's dues is earmarked for this program. Since its inception, \$392,095 in restitution has been paid by the Client Security Fund.

A Lawyer Referral Service, which allows members of the public to identify a lawyer who can help them with their particular legal problem. The Service receives about 3,000 calls and makes approximately 2,300 referrals each year.

A fee Arbitration Program to settle fee disputes between an attorney and a client short of litigation.

Publication of information pamphlets for the general public on a wide variety of legal subjects, including marriage and divorce, landlord-tenant law, small claims court, rights of clients, wills and probate, etc.

Character and fitness reviews to determine if applicants for admission to the State Bar possess the necessary traits of character and fitness for the practice of law.

Provision of direct financial support for legal services to the poor through the Montana Law Foundation.

A variety of services to its members, including continuing legal education seminars and legal publications.

### MEMBERSHIP DATA

As of April 20, 1992, State Bar membership totaled 2,917. Of this number, 2,242 are in-state members and 675 are out-of-state members. Of the same total, 2,366 were active members, 468 were inactive, and 83 had judicial status.

### FINANCIAL INFORMATION

Annual dues are \$120 for active members and \$50.00 for inactive members. Judicial members do not pay dues while serving on the bench. (These assessments are in addition to the \$25 paid to the Clerk of Court for the statutory lawyer license fee.)

Dues income constitutes the major source of income to the State Bar. Other revenue sources include income from State Bar sponsored continuing legal education programs and the sale of publications.

### PRESIDENTS OF THE ASSOCIATION

Past presidents of the State Bar of Montana are as follows:

1975-76      Marshall H. Murray  
                 Kalispell

1976-77      Thomas H. Mahan  
                 Helena

1977-78      Bruce R. Toole  
                 Billings

1978-79      Theodore K. Thompson  
                 Havre

1979-80      L. Morris Ormseth  
                 Great Falls

1980-81      Robert D. Corette  
                 Butte

1981-82      Alexander A. George  
                 Missoula

1982-83      Ward A. Shanahan  
                 Helena

1983-84      Sandy McCracken  
                 Great Falls

1984-85      Douglas A. Wold  
                 Polson

1985-86      George C. Dalthorp  
                 Billings

1986-87      Terry N. Triewailer  
                 Whitefish

1987-88      John A. Warner  
                 Havre

1988-89      Max A. Hansen  
                 Dillon

1989-90      Gary L. Spaeth  
                 Red Lodge

1990-91      Damon L. Gannett  
                 Billings

1991-92      James W. Johnson  
                 Kalispell

1992-93      Sherry S. Matteucci  
                 Billings

## THE UNIVERSITY OF MONTANA SCHOOL OF LAW

The University of Montana School of Law, founded in 1911, is the oldest professional school at the University of Montana. [The second professional school to be established at Montana State University (now University of Montana), the Law School was antedated only by the School of Engineering, which was transferred to Montana State College (now MSU) in 1913]. While the creation of a law school had been contemplated in the 1983 Act establishing the University of Montana, the founding of the Law School was made possible by a gift from the widow of William Wirt Dixon, a well known and respected Montana lawyer. Mrs. Dixon's gift spurred the Legislature to enact a bill establishing the Department of Law.

From an enrollment of 17 in the first year of its existence, the School of Law grew steadily until 1970 when the law faculty voted to cap admissions to the first year program at 75. Since 1970, the number of applications for admission to the Law School has far exceeded the number of positions available in the first year class. For example, over five hundred applications were received for positions in the law class which entered in September of 1991.

In voting to limit to 75 the number of entering students, the law faculty also limited the enrollment of nonresidents to no more than twenty percent of an entering class. Nonresident applications have increased dramatically in recent years - the School in 1992 received more than twenty-five nonresident applications for every nonresident position.

Although the Law School ranks among the smallest ABA approved law schools in the Nation, its student population is diverse. typically, some thirty undergraduate institutions

are represented in each entering class. the average entering age of law students today is approximately 30. As this statistic suggests, many students enter law school after engaging in other careers.

While the first woman was admitted to the Law School in 1913, it was not until the mid-1970's that women began applying to the Law School in large numbers. Since the early 1980's women have comprised between 33-40% of the student population. Thirty-four of the 75 student who began their law studies in September 1991 are women.

Native American enrollment enrollment constitutes approximately 6% of the student population. The Law School's commitment to a strong Indian Law Program accounts in no small part for the relatively large enrollment of Native american students. In addition to courses in Indian Law, the Law School has for the last decade operated an Indian Law Clinic as a part of its clinical education program. While providing valuable services to the various tribal courts and governments, the Indian Law Clinic provides Indian and non-Indian law students the opportunity to develop knowledge and skills which will prepare them for work on or near Montana's seven Indian reservations.

During the last decade the law faculty have been engaged in an ambitious project to design and implement a curriculum which will prepare our graduates for the demands of modern law practice. To that end, the law faculty developed one of the most ambitious legal writing and professional skills program in the country, designed an innovative introductory program for first year students, established a first-year law firm program, and developed teaching materials which integrate theory and practice. as a part of this curriculum project, the faculty are in

the process of identifying what knowledge and skills every graduate should possess; what transactions every graduate should be competent to handle; and what personal qualities every graduate must develop to be an effective and responsible lawyer.

The curriculum evolving from these efforts has attracted national attention. For example, the October 1990 issue of Prentice Hall's publication Lawyer Hiring and Training Report, profiled three law schools considered to be the most innovative law schools in the nation. University of Montana School of Law is one of those three! The Law School was one of the small number of law schools whose curricular efforts were featured at the 1991 Association of American Law School's annual meeting in Washington, D.C.

The Law School's emphasis in recent years on the integration of theory and practice has undoubtedly been an important factor in the School's remarkable record in various regional and national law school competitions. During the last twelve years, the Law School represented the Northwest eight times in the final rounds of the National Moot Court Competition in New York. In 1981 the Law School won the National Moot Court Competition. The School's negotiation team has placed first in the Western Regional ABA Negotiations competition in three of the last five years, placing third in the nation in 1988. In 1992 the Law School's trial advocacy team won the national championship and placed second in the nation, in 1989. In 1991, the Client Counseling team won the national finals and represented the School in international competition in London. This record of accomplishment by UM teams certainly reflects favorably on the School's students, its faculty, and curriculum.

In addition to its work on curriculum, the law faculty continues to be active in research and writing and in public service activities. Articles of law faculty appear regularly in major national law

journals; faculty play key roles on many State Bar committees; and faculty actively participate in law reform efforts.

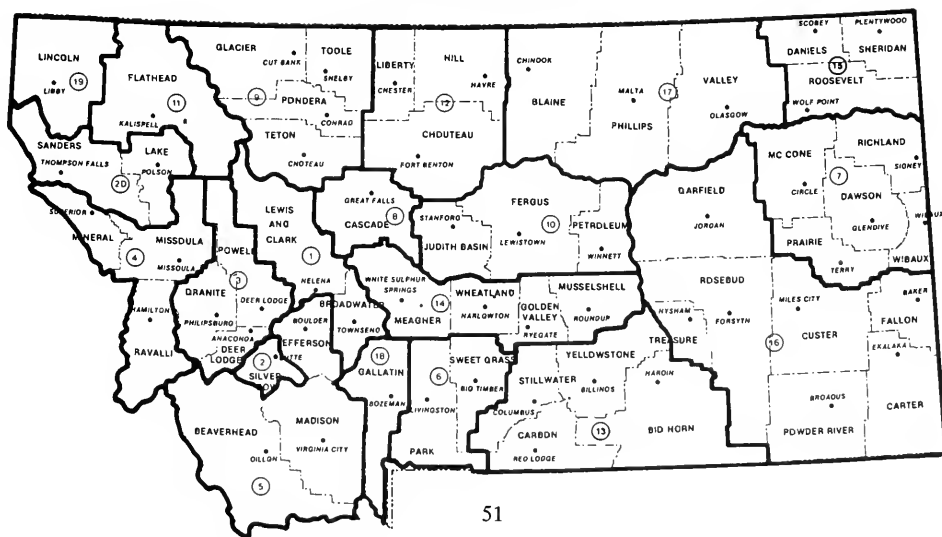
Public education regarding the law has also been a priority for the Law School. In recent years, the School has sponsored or co-sponsored public conferences on topics such as the 1972 Montana Constitution, the public's right to know versus the right of privacy, a patient's right to choose medical treatment, national health care policy and securities regulation. The Law School has participated with the Montana Supreme Court in programs designed to educate the public regarding the Montana judicial system. Most recently, the Law School, in conjunction with the Western Montana Bar association and the Montana Trial Lawyers, conducted seven week "Citizens Law School" program addressing a range of common legal problems. Over one hundred local citizens were enrolled in each program.

The Law School has a long and proud tradition of education and public service. together with the Judiciary and the Bar of this state the Law School is working to prepare students to be effective lawyers and leaders in their communities. as this brief overview indicates, Montanans have many reasons to be proud of the School of Law.

## JUDICIAL DISTRICT BY COUNTY

Beaverhead	5	Granite	3	Powell	3
Big Horn	13	Hill	12	Prairie	7
Blaine	17	Jefferson	5	Ravalli	4
Broadwater	1	Judith Basin	10	Richland	7
Carbon	13	Lake	20	Roosevelt	15
Carter	16	Lewis and Clark	1	Rosebud	16
Cascade	8	Liberty	12	Sanders	20
Chouteau	12	Lincoln	19	Sheridan	15
Custer	16	McCone	7	Silver Bow	2
Daniels	15	Madison	5	Stillwater	13
Dawson	7	Meagher	14	Sweet Grass	6
Deer Lodge	3	Mineral	4	Teton	9
Fallon	16	Missoula	4	Toole	9
Fergus	10	Musselshell	14	Treasure	16
Flathead	11	Park	6	Valley	17
Gallatin	18	Petroleum	10	Wheatland	14
Garfield	16	Phillips	17	Wibaux	7
Glacier	9	Pondera	9	Yellowstone	13
Golden Valley	14	Powder River	16		

## MONTANA JUDICIAL DISTRICTS





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## ADDENDUM





1. NEW CASES APPEALS: Civil 388 Criminal 90  
ORIGINAL PROCEEDINGS: Civil 74 Criminal 84  
Type of Writ: Habeas Corpus 27 Supervisory Control 73  
34 post conviction 18 mandamus  
Other 3 prohibition 3 petition for review

2. NOTICES OF APPEAL 54

3. BRIEFS: Appellant 382 Respondent 371 Reply 300 Amicus 22

4. MOTIONS  
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Extension to File Brief 1181 Appear Amicus Curiae 11  
Dismissal by Respondent 55 Dismissal by Appellant 28  
Other Motions 23

5. OPINIONS COURT ACTION: Affirmed 226 Reversed 15  
Affirmed in Part/Reversed in Part 35  
Reversed and Remanded 47 Revised 3  
Other 6

6. CLOSURES APPEALS: By Dismissal 133 By Remittitur 330  
ORIGINAL PROCEEDINGS: Writ Denied 106 Writ Granted 7

7. APPEARANCES IN APPEAL: Pro Se 13 Forma Pauperis 0  
Prisoner 4 Prisoner W/Counsel 1  
IN ORIGINAL PROCEEDING: Pro Se 12 In Forma Pauperis 0  
Prisoner 13 Prisoner W/Counsel 0

8. CLASSIFICATIONS: 5-Just. SOB 237 En Banc 88 Oral Arg. 52

9. REHEARING: Petitions 64 Obj. to Petitions 50  
Denied 49 Granted 0





Dear Fellow Montanan:

Someday you may want to take someone to a small claims court in order to settle a dispute that involves \$3,000 or less. Or someone may take you to the small claims court. In either case, you will need to know how the small claims court works, since you may decide not to hire a lawyer.

This pamphlet has been prepared to show you how to use the small claims court in your community. It defines legal terms and explains who can sue in a small claims court, what kinds of cases a small claims court handles, and the proper procedures for bringing a case. I know you will find this information helpful if you ever go to small claims court.

Sincerely,

MARC RACICOT  
Attorney General

5,000 copies of this public document were published at an estimated cost of 14¢ per copy, for a total cost of \$700.00, which includes \$450.00 for printing and \$250.00 for distribution.

# SMALL CLAIMS COURT



## A Citizen's Guide

prepared by  
Office of the Attorney General  
Department of Justice  
State of Montana

December 1991

# SMALL CLAIMS COURT

## I. WHAT IS A SMALL CLAIMS COURT?

A small claims court is a court where disputes between persons over small amounts of money or personal property can be decided quickly, inexpensively, and informally. These courts are divisions of the Justice of Peace Court in each county. Juries and lawyers are not necessary, and there are no involved and lengthy formalities. Although not present in every District Court, there may also be a small claims division in the District Court. Information and/or forms for proceeding before that court may be obtained from the Clerk of the District Court. Although the procedures are similar to those described here (except that a District Court small claims division is limited to handling cases involving amounts up to \$2500), this pamphlet describes the provisions of law governing the small claims divisions of the Justice of the Peace Courts.

## II. WHO CAN SUE OR BE SUED IN SMALL CLAIMS COURT?

In small claims court you can sue, or be sued by, an individual, a partnership, a corporation, a union, an association, or any other kind of organization or entity, except the state or a state agency.

If you are the person suing, you are the plaintiff. The plaintiff must be the person to whom the money or property claimed is actually owed, or the person trying to determine who is entitled to the funds in dispute. An assignee cannot be plaintiff in small claims court. If you are the person being sued, you are the defendant.

If you are suing a corporation, use its correct legal name. This can be obtained by calling the Montana Secretary of State's office, State Capitol, Helena, Montana 59620 (444-2034). If you are suing a married individual, you may wish to sue both the husband and the wife in appropriate cases so that you can collect from jointly owned property.

## III. WHAT KIND OF CASE CAN YOU TAKE TO SMALL CLAIMS COURT?

You may take three kinds of cases to small claims court. You may sue in small claims court if you claim that another person owes you a sum of money, which cannot be more than \$3000. You may sue in small claims court if you claim that another person has personal

property belonging to you worth up to \$3000. Whether you sue to recover money or personal property, the limit is \$3000. The small claims court also is the proper place to bring an "interpleader" action involving \$3000 or less. Interpleader actions are brought by a disinterested party, such as an insurance company, to determine the rights of rival parties who all claim they are entitled to the funds held by the disinterested party.

You must file your complaint in a county where the defendant can be served with the complaint. Usually, this is where the defendant lives or has a place of business.

## IV. COUNTERCLAIM.

If you are the defendant in a small claims action, and you believe plaintiff owes you some money or personal property, you may file a counterclaim. A counterclaim must arise out of the same transaction as the plaintiff's complaint. For example, if the plaintiff sues claiming that he fixed your car and you have not paid him the agreed price, but you believe the plaintiff did not perform the repairs properly, you can counterclaim for the cost of having the repairs performed by someone else. You must file a counterclaim with the small claims court and have it served upon the plaintiff more than 72 hours before the scheduled date of the trial. The small claims court office will provide a counterclaim form. When you file a counterclaim, you must pay the clerk a filing fee. You may file a counterclaim even if you admit that you owe the plaintiff some or all of the money he claims from you. Your counterclaim cannot exceed the \$3000 limit.

## V. ATTORNEYS.

A party may not be represented by an attorney in small claims court unless all parties are represented by attorneys. However, you may wish to talk with an attorney before filing a complaint or appearing in court as a defendant to find out if there is a legal basis for your position.

If you are the defendant and wish to be represented by an attorney or to request a jury trial, the law allows you to remove the case from small claims court to justice court by filing a notice of removal.

When a defendant removes a case to justice court, the plaintiff can either represent himself or hire an attorney. If the plaintiff hires an attorney and the defendant loses the case in justice court, the court may make the defendant pay the plaintiff's attorney fees.

## **VI. HOW TO PROCEED.**

### **A. Plaintiff.**

Before filing a complaint, it is recommended that you send a letter by certified mail to the person you wish to sue. In the letter, state the problem and demand payment within 10 days or other specified time. If the person refuses the letter or if he doesn't pay within the time stated in the letter, you should file your claim. Bring your proof of mailing of the letter with you to court, both when you file your claim and if you go to trial. The letter is your proof that you have demanded payment from the defendant.

To file a complaint, you must appear before the justice of the peace or his clerk and execute a sworn small claims complaint. The judge or court clerk will provide a complaint form and help you fill it out, but they cannot give you legal advice. On the form, state why you are suing, the amount you are suing for, and the facts of your case. Give the correct and complete name and street address of the person you are suing. A post office box number is not sufficient.

When you file a complaint, you must pay the clerk a filing fee of \$10.00. The person who wins the case can recover filing and service costs from the other party. If the defendant removes the case to justice court, you will not have to fill out another complaint form or pay another filing fee. If you cannot afford to pay the filing fee, you must complete an affidavit requesting that the court waive the fee.

After the complaint is filed, the judge will set a time and date for the trial and order the defendant to appear on that date. The sheriff, constable, or other process server will serve this order on the defendant. The hearing date will be from 10 to 40 days after the date of the order. The order must be served on the defendant at least 5 days before the hearing date. If the order is not served on time, you can request the judge to reset the hearing.

If the defendant removes the case to justice court, he will probably have an attorney. You may hire an attorney too, but it is not required.

### **B. Defendant.**

When someone files a claim against you, you are served with a copy of the complaint and an order to appear in court on the date of the hearing. At this point, there are several things you can do:

1. You can try to settle your differences with the plaintiff out of court.

2. You may file a counterclaim against the plaintiff.

3. You may contact the judge in small claims court and ask to have the trial postponed to another date if you cannot be there or cannot be prepared on the scheduled date.

4. You can remove the case to justice court. To remove the case to justice court you must file a notice of removal in the small claims court within 10 days after you have been served with the complaint. If you do this, you may have an attorney represent you at trial and you can request a jury trial. If you do not remove the case to justice court within 10 days, you waive your right to an attorney and to jury trial. If you lose the case in justice court, the judge may order you to pay the plaintiff's attorney fees, if any.

5. If you do not do any of the above, you should go to court on the scheduled date of the trial. You must be there to present your side of the case if you do not wish a default to be taken against you.

You must pay the clerk of small claims court a fee of \$5.00 either when you come in to file a counterclaim or when you appear in court for trial. If you win the case, you can recover this cost from the plaintiff. If you cannot afford to pay the filing fee, you must complete an affidavit requesting that the court waive the fee.

## **VII. BEFORE TRIAL.**

### **A. Settlement Out of Court.**

If you reach an agreement out of court, get it in writing. Give a copy of your settlement agreement, signed by both parties, to the clerk of the small claims court, and ask that the complaint be dismissed.

### **B. Trial Preparation.**

If you are not able to settle the case before trial, you should prepare to appear in court on the hearing date and present your case. Make sure you have all papers which relate to the case, such as receipts, bills, estimates, contracts, letters, canceled checks, officer's reports, and leases. Your case may require you to present photographs, articles of clothing, or diagrams. Contact the people you need to be your witnesses, explain your case, and make sure they will be at the trial on time.

### **C. Subpoena.**

A subpoena is an order from the court requiring a person to come to court. If you think a necessary witness will not come to the trial at your

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request, ask the judge to subpoena that person. If the judge subpoenas a witness, you must pay witness and service fees, but if you win the case, you can recover these costs.

#### **D. Removal to Justice Court.**

The defendant has the option to remove the case to justice court within 10 days after the complaint is served. That option is discussed above in Section VI.B.4.

### **VIII. IF YOU DO NOT APPEAR AT TRIAL.**

#### **A. Plaintiff.**

If a trial date has been set and is not changed, you may lose your case if you do not come to the trial. The judge cannot enter a judgment for you unless you are present to give your testimony at trial.

#### **B. Defendant.**

If a trial date has been set and is not changed, a default judgment may be entered against you if you do not come to the trial. This means that if you are not there to defend your position, the plaintiff can win the case in your absence.

### **IX. TRIAL.**

#### **A. Procedure.**

Small claims courts operate informally. You may want to sit in on another case in the court where your case will be heard, just to see how the trial is conducted.

At the time of trial, the judge will place you under oath and ask you to tell the facts of your case. Facts should be presented in the order in which they happened.

First, the plaintiff tells his side of the case, presents evidence, and calls all his witnesses. It is then the defendant's turn to tell his side of the case, present evidence, and call witnesses. Each party may cross-examine the other party and his witnesses and ask questions about any evidence. After testimony, each side may make closing statements to sum up the case.

#### **B. Proving Your Case.**

As the plaintiff, you must prove the defendant caused some damage and owes you a specific amount of money as a result.

As the defendant, you should be prepared to prove that you do not owe the plaintiff what he claims. You can do this by showing that you did not cause the damage, or that the damage is less than the plaintiff claims, or that you have paid all that you owe to the plaintiff. If you are the defendant, you may also have a counterclaim against the plaintiff. If so, you must prove

that the plaintiff is the person at fault and that he owes you a specific amount of money.

In an interpleader action the plaintiff deposits with the court the money in dispute, and the defendants must prove that they are owed the money.

Prove your facts with evidence. You can use your own testimony, the other party's testimony, and other witnesses' testimony as evidence. With the judge's permission, you may also use any document, bill, diagram, photograph, police report, estimate of damages, or other objects related to the case as evidence to prove your case.

#### **X. JUDGMENT.**

A judgment is the written decision of the court. Upon conclusion of the case tried to the court, the judge will make his findings and enter judgment. If you win the case, the judgment against the other side entitles you to collect from that person the amount of the judgment plus court costs. You must collect payment on your own. But if the losing party doesn't pay you, you can go back into court and request a writ of execution. This is an order to the sheriff directing him to take money or specific personal property from the losing party to pay the judgment.

#### **XI. APPEAL.**

If you are not satisfied with the judgment of the small claims court you may appeal the case to the district court of the county where the decision was made. The appeal must be in writing, served upon the other party, and filed at the small claims court within 10 days of the judgment. Within 30 days after the appeal is filed, the record of your trial, and the evidence, will be sent by the small claims court to the district court. You will be notified when this happens, but it is your duty to make sure the record is transmitted.

An appeal may be made only on questions of law. This means that you can appeal only if you believe the small claims court applied the law incorrectly in your case. The district court judge will not accept new evidence, witnesses or testimony. The case is not retried on appeal. The district court judge will only review the record that was made at the trial, view the evidence, and enter the judgment accordingly.

If the parties are represented by attorneys and one side appeals, the party who wins the appeal may be awarded reasonable attorney fees. Information on appeal procedures and fees is available through the small claims court.



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